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In the Supreme Court of the United States

JOAN GREENWAY COLLINS, WIDOW, AND CARROLL LEE COLLINS, MINOR CHILD OF ADOLPHUS HENRY COLLINS, DECEASED, PETITIONERS,

vs.

AMERICAN BUSLINES, INC., RESPONDENT EMPLOYER, THE INDUSTRIAL COMMISSION OF ARIZONA, RESPONDENT INSURANCE CARRIER.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Arizona, entered on June 28, 1955, petition for rehearing denied October 4, 1955.

OPINION BELOW

The opinion below (Appendix, *infra*, pp. 13 to 38) is reported at 286 P. (2d) 214. The order denying rehearing is contained in Appendix, p. 39. The Industrial Commission order under review is contained at Appendix, *infra*, p. 11.

JURISDICTION

The judgment of the Court below was entered June 28, 1955, Appendix, p. 13, *infra*; rehearing denied October 4, 1955, Appendix, *infra*, p. 39. The jurisdiction of this Court is invoked under 28 U.S.C. sec. 1257(3).

QUESTION PRESENTED

Whether a state workmen's compensation law may be applied by the state of injury to a motor carrier operator engaged exclusively in interstate commerce where (a) the operator lives in, (b) made his contract of employment in, and (c) is covered by the workmen's compensation act of another state?

STATUTE AND CONSTITUTIONAL PROVISION INVOLVED

In addition to the federal commerce clause, the applicable provision of law is the Arizona Workmen's Compensation Act, sec. 56-928 (a), Arizona Code Annotated, 1952 Supp.:

> "Employers subject to the provisions of this article are . . . every person who has in his employ three [3] or more workmen or operatives regularly employed . . . . For the purposes of this section 'regularly employed' includes all employments, whether continuous throughout the year, or for only a portion of the year, in the usual trade, business, profession, or occupation of an employer."

STATEMENT

I. Facts

The facts are fairly stated in the opinion of the Court below. Deceased was a bus driver employed by the Company respondent, a Nebraska corporation, in 1944, at El Paso, Texas. At the time of his death, he was regularly driving a route between Los Angeles, California, where he lived with his now widow and orphan, and Phoenix, Arizona. The Company was engaged exclusively in interstate commerce. The driver spent approximately 40% of his working time in Arizona, Appendix p. 17, *infra*.

Collins was killed as the result of a bus tire blow-out at Ehrenburg, Arizona. He was covered by the California Workmen's Compensation Act. However the extremely large disparity between the allowance of the California and Arizona systems (estimated by the dissenting Judge below as $70,000, Appendix, p. 26) obviously induced the widow and infant to apply for an award in Arizona.

The Industrial Commission of Arizona, feeling itself bound by the decision of the Arizona Supreme Court in *Industrial Commission v. Watson Bros. Transp. Co., Inc.*, 75 Ariz. 357, 256 P.(2d), 730 (1953), declared itself to be without jurisdiction. (Appendix p. 11, *infra.*) The Arizona statute, quoted above, covers only those "regularly employed" in Arizona, and the *Watson Bros.* case construed that phrase (as stated by the Arizona Court in the instant case) to bar any employee from coverage in Arizona who (a) made his contract of employment elsewhere, and (b) worked in states other than Arizona, regardless of whether he was engaged exclusively in interstate commerce or not.

II. The Proceedings Below; the Decision of a Federal Question

The widow and orphan, by appropriate Arizona procedure, brought the matter to the Arizona Supreme Court, which divided three ways:

1. The opinion of the Court disavowed the *Watson Bros.* rule, held that Collins was "regularly employed" in Arizona, and affirmed the want of jurisdiction in the Industrial Commission solely on the ground that the statute, if interpreted to cover the case, would violate the Commerce Clause. Appendix, p. 13, *infra.*

2. One Justice concurred on the grounds of the *Watson Bros.* case, thus as to himself raising no federal question. Appendix, p. 25, *infra.*

3. One Judge dissented on the ground that the statute as interpreted to cover the case, would not place an undue burden on commerce. Appendix, p. 25, *infra.*

The opinion of the Court below may be summarized as follows: First, it holds that the Arizona act covers persons injured in the state, regardless of whether "an employer requires his employees to divide their work between two states, and to the extent [the *Watson Bros.* opinion] indicates otherwise, it is repudiated." Appendix, p. 18, *infra.*

The Court then raised the controlling question: "Whether the Commerce Clause, United States Constitution, Article I, Section 8, makes inapplicable our workmen's compensation laws for the reason that decedent was engaged in interstate commerce when killed in Arizona, and was covered under the workmen's compensation laws of California." Appendix, p. 18, *infra*.

The Court concluded that the Commerce Clause did so preclude the operation of the Arizona Act, holding that the effect of coverage would be to compel employers to insure twice: "The threat of liability would require duplicate premiums and it is this duplication which creates the undue burden on Interstate Commerce." Appendix, p. 20, *infra*. It is the double coverage, said the Court, "which is prohibited under our interpretation of the Commerce Clause." Appendix, p. 21, *infra*. In so holding, the Court considered itself to be following the requirements of *Southern Pacific Co. v. Arizona*, 325 U.S. 761 (1945).

The Court below recognized that it could not control the making of an allowance by another state but concluded, "our inability to control other states does not justify our ignoring the consequences of our internal laws which substantially affect interstate commerce; the commerce clause would otherwise be meaningless." Appendix, p. 24, *infra*.

Petitioners, relying heavily on the dissenting view, would incorporate it by reference here. Appendix, p. 25. Suffice it to say that the dissent contends that the federal Constitution in no way precludes coverage of the deceased.

As has been noted, a petition for rehearing, based exclusively on the federal question and contained in the record on file with the Clerk of this Court, was duly filed; was opposed on the ground that the matter had been covered; and was denied.

REASONS FOR GRANTING THE WRIT

1. As a preliminary, it may be noted that a federal question was decided, and is open to review here. Where a state statute is

interpreted in a particular manner because the state court felt constrained to conclude as it did because of the Federal Constitution and this court's prior adjudications of Constitutional immunity," this Court may review. *State Tax Comm. v. Van Cott*, 306 U.S. 511, 514 (1939); and see *Perkins v. Benguet Consol. Min. Co.*, 342 U.S. 437, 443 (1952). Such a procedure is particularly appropriate here, where the opinion of the Arizona Court reveals full realization of the justice of permitting the state of the accident to allow compensation, and is clearly restrained from doing so only by what were thought to be the demands of this Court.

2. The question is substantial. The resources of this place do not permit a technically competent quantitative analysis of the number of truckers and bus drivers who may be involved the country over in purely interstate employment under statutes which might be open to a construction of coverage in similar circumstances, but the number is almost obviously large, and the problem is clearly recurrent. One way or another, related aspects of the problem have troubled many courts; cf. the Ohio opinion largely agreeing with the decision below, *Spohn v. Industrial Comm.*, 138 Ohio St. 42, 32 N.E.(2d) 554 (1941), sharply limited in *Holly v. Indus. Comm.*, 142 Ohio St. 79, 15 N.E.(2d) 152 (1943). Cf. the New York approach, largely one of brushing the problem aside as unimportant without considering precisely whether interstate commerce was exclusively involved, *Ettors v. Railway of New England*, 266 App. Div. 929, 43 N.Y.S.2d 884 (1943); *Ahearn v. United Van Lines, Inc.*, 265 App. Div. 898, 37 N.Y.S. 2d 991 (1942). The State of Washington, on the other hand, has avoided the problem by abnormally tight statutory construction, cf. *McClung v. Prati*, 270 P. (2d) 1063 (Wash., 1954).

The result is that the family here involved would, on identical facts, be treated as barred by the federal Constitution from protection in Arizona, be covered in New York, be on most uncertain intermediate ground in Ohio, and be subject to extremely tight statutory limitations in Washington. The same problem can rise

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No. 523

In the Supreme Court of the United States

OCTOBER TERM, 1955

JOAN GREENWAY COLLINS, WIDOW, AND CARROLL LEE COLLINS, MINOR CHILD OF ADOLPHUS HENRY COLLINS, DECEASED, PETITIONERS,

vs.

AMERICAN BUSLINES, INC., RESPONDENT EMPLOYER,
THE INDUSTRIAL COMMISSION OF ARIZONA, RESPONDENT INSURANCE CARRIER.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

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in the airplane field; see *Spelar v. American Overseas Airlines, Inc.*, 80 Fed. Supp. 344, 347 (S.D. N.Y., 1947), following the New York, or coverage, approach; disposed of on unrelated grounds here; 338 U.S. 217 (1949).

3. The decision conflicts with the applicable holdings of this Court. *Southern Pacific Co. v. Arizona, supra*, relied on below, requires no such result; that case, apart from all other distinguishing circumstances, must be read against *South Carolina State Highway Dept. v. Barnwell Bros.*, 303 U.S. 177 (1938), upholding a most severe regulation of state highways. As Chief Justice Stone said in the *Southern Pacific* case, *Barnwell* was distinguishable because "there are few subjects of state regulation affecting interstate commerce which are so peculiarly of local concern as is the use of the state's highways." 325 U.S. 761 at 783.

There is no possibility of double liability for an employer in these cases; this was recognized by the Court below, which pointed out that *Industrial Comm. of Wis. v. McCartin*, 330 U.S. 622 (1947), precludes any such result. The "undue burden," therefore, was found to be solely the necessity of paying added insurance premiums: "The threat of liability would require duplicate premiums and it is this duplication which creates the undue burden on interstate commerce." Appendix, p. 20, *infra*.

The actuality of the double premium is doubtful. Arizona law permits taking out one policy with any company "authorized to transact the business of workmen's compensation insurance in the state," sec. 2, 56-932, A.C.A. 1939, and the insured could insure itself for the higher amount for both California and Arizona on one premium. But we put this aspect of the matter aside as an unimportant detail of state law; for the feared premium would not in any case be an undue burden on commerce.

This Court has so recently exhaustively analyzed the prerogatives of the state of the accident to protect its substantial interests in the consequences of these misfortunes, that we need do little more than cite the controlling cases: *Watson v. Employers Liabil.*

Assur. Corp., 348 U.S. 66, 72 (1954), stressing the interest of the state of the accident "in policies of insurance which are designed to assure ultimate payment of such damages," *Carroll v. Lanza*, 349 U.S. 408, 412, 413 (1955), a Workmen's Compensation case:

> ". . . in these personal injury cases the state where the injury occurs need not be a vassal to the home state and allow only that remedy which the home state has marked as the exclusive one. . . . The state where the tort occurs certainly has a concern in the problems following in the wake of the injury."

While the *Carroll* case presented a full faith and credit rather than a purely commerce question, the problem of unreasonable burden is much the same. The decision below is not in accord with these two recent holdings of this Court.

CONCLUSION

For the foregoing reasons, it is respectfully prayed that this petition for certiorari be granted.

Respectfully submitted,

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November, 1955.

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would continue the same work for the same employer, the inability of our workmen's compensation laws to assess premiums or award compensation for the activities of the employee in another state is obvious if interstate commerce is not to be unduly burdened. It is this feature which would require the total wages of such an employee to be divided and his benefits concomitantly less, even if he were hired and injured in this state.

We decline to accept petitioners' view. Section 56-923, A.C.A. 1939, indicates that the application of our workmen's compensation laws is not to be limited to only those injuries occurring within the state. The legislature specifically intended extraterritorial coverage for employees hired in this state. Presumably employees hired in Arizona are citizens of this state and entitled to the benefits of Arizona law when their employment takes them into another state. We see no reason to contravene this legislative intent by adopting petitioner's theory especially since this would require such employees to receive much less than the legislature intended as compensation for industrial accidents.

Petitioner is correct in his assertion that we cannot guarantee that compensation will be awarded on the merits of the claim in California. But our inability to control other states does not justify our ignoring the consequences of our internal laws which substantially affect interstate commerce; the commerce clause would otherwise be meaningless.

The award is affirmed.

ARTHUR T. LAPRADE
Chief Justice

CONCURRING:

LEVI S. UDALL
Justice

DUDLEY W. WINDES
Justice

APPENDIX

CASE NO. AK 24354

1

BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA

JOAN GREENWAY COLLINS, WIDOW OF, AND CARROLL LEE COLLINS, MINOR CHILD OF ADOLPHUS HENRY COLLINS, DECEASED,

CLAIMANTS,

vs.

AMERICAN BUSLINES, INC.,

DEFENDANT EMPLOYER,

THE INDUSTRIAL COMMISSION OF ARIZONA,

DEFENDANT INSURANCE CARRIER.

FINDINGS AND ORDER DISMISSING CLAIM FOR LACK OF JURISDICTION

Heretofore on the 14th day of October 1953, claimant, Joan Greenway Collins, in her own behalf as widow, and on behalf of Carroll Lee Collins, minor child, filed with this Commission her widow's and dependent's claim for compensation under the terms of the Arizona Workmen's Compensation Act alleging benefits due unto claimants by virtue of the death of Adolphus Henry Collins, whose death occurred on or about September 30, 1953. The Industrial Commission of Arizona, after considering said claim in the premises, and all matters relative thereto, and thereunto appertaining, now enters its Findings and Order as follows:

FINDINGS

1. That claimant, Joan Greenway Collins, is the widow of Adolphus Henry Collins, deceased. That claimant, Carroll Lee Collins, born August 17th, 1953, is the minor son of the said Adolphus Henry Collins, deceased.

2. That the said Adolphus Henry Collins died on or about the 30th day of September, 1953, as a result of an injury by accident occurring near Ehrenburg, Arizona.

3. That at the time of his death the said Adolphus Henry Collins was regularly employed by the above named defendant employer, American Buslines, Incorporated, in the State of California. That the said Collins was at said time a legal resident of the State of California and he was maintaining a home in said state for himself and family. That his employment with American Buslines, Incorporated involved employment in the State of California, he being required, however, to travel at intervals from a point in the State of California to a terminal point in Arizona, and return to California.

4. That the defendant employer maintained workmen's compensation coverage in the State of California and that payroll premium on the said Adolphus Henry Collins was reported to the State of California. That no reporting of such was made at any time to the Industrial Commission of Arizona.

5. That the said Adolphus Henry Collins, at the time of his death, was not regularly employed in the State of Arizona as said term has been defined by the Supreme Court of Arizona in the case of Industrial Commission vs. Watson Brothers Transportation Company, Supreme Court Case No. 5713, dated May 11th, 1953.

6. That the Industrial Commission of Arizona does not have jurisdiction in the premises, and that said widow-defendent's claim on file herein should be denied for lack of jurisdiction.

ORDER

NOW, THEREFORE, IT IS ORDERED that the claim of Joan Greenway Collins, as widow of, and Carroll Lee Collins, as minor child of Adolphus Henry Collins, deceased, filed herein on the 14th day of October, 1953, be, and the same is, hereby denied and dismissed for lack of jurisdiction, and that the said claimants take nothing in the premises.

employees engaged exclusively in interstate commerce, it would unduly burden such commerce to permit the extraction of a second premium in this state to cover the same employees for the risks of the same trips. It was assumed without being stated or discussed that Arizona in seeking to collect premiums for its state compensation fund imposed the undue burden upon interstate commerce. That assumption is adhered to by the majority of the court in arriving at a decision in this case. Since it is this basic assumption on which the decisions in both cases rest, it deserves a somewhat extended analysis.

If the Workmen's Compensation Acts of neither the states of California nor Arizona covered employees engaged in interstate commerce, no premium would be extracted so that obviously there would be no burden on interstate commerce. If the Workmen's Compensation Act of either state—and not the other—covered employees engaged in interstate commerce, the extraction of a premium by the law of such state would not unduly burden interstate commerce. Hall v. Industrial Commission, 131 Ohio St. 416, 3 N.E. 2d 367. If the Workmen's Compensation Acts of both states afforded coverage to employees engaged in interstate commerce and if both sought to extract a premium for such coverage wherever the employee traveled in interstate commerce, the employer would be compelled by the conjoined effect of the two state laws to pay a double or multiple premium for coverage of the same risk.[1] If the employer is *unable to escape the payment of such premium*, either in one state or the other, an undue burden is imposed upon interstate commerce. In order to avoid this undue burden on interstate commerce either it must be held that both states impose the undue burden or that one but not the other unduly burdens interstate commerce. To hold that both states impose the burden leads to the undesirable result that employees engaged

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[1] I have used the phrases "double premiums" and "multiple premiums" as meaning two or more premiums all sufficiently large to afford compensation for the risk of the entire trip.

IT IS FURTHER ORDERED that any party aggrieved by this award may apply for rehearing of the same by filing application therefor at the office of this Commission, within TWENTY (20) DAYS after the service of this award as provided by the rules and regulations of this Commission; and that jurisdiction be, and it is hereby reserved to alter, amend or rescind this award upon good cause.

THE INDUSTRIAL COMMISSION OF ARIZONA
By B. F. Hill
J. J. O'Neill
F. A. Nathan
Commissioners.

Dated at Phoenix, Arizona,
this 30th day of November, 1953.

II

No. 5977

JOAN GREENWAY COLLINS, WIDOW, AND CARROLL LEE COLLINS, MINOR CHILD OF ADOLPHUS HENRY COLLINS, DECEASED, PETITIONERS,

vs.

AMERICAN BUSLINES, INC., RESPONDENT EMPLOYER, THE INDUSTRIAL COMMISSION OF ARIZONA, RESPONDENT INSURANCE CARRIER.

Appeal by Certiorari from an Award of The Industrial Commission of Arizona
Award Affirmed

Lewis, Roca, Scoville & Beauchamp, and Walter Cheifetz, of Phoenix
Attorneys for Petitioners,

Robert K. Park, of Phoenix
Attorney for Respondent The Industrial Commission of Arizona

John R. Franks, Donald J. Morgan
and John E. Mills,
Of Counsel.

LaPRADE, Chief Justice.

Review by certiorari of a determination of the Arizona Industrial Commission that it was without jurisdiction to hear a claim for compensation allegedly caused by the death of petitioner's husband while in the course of his employment.

The facts are these: Adolphus Henry Collins was employed as a bus driver by the American Buslines, Inc., a Nebraska corporation, in 1944, at El Paso, Texas. During the years of his employment he drove various bus routes throughout the Southwest. At the time of his death Collins was driving a bus route between Los Angeles, California and Phoenix, Arizona from a home terminal in Los Angeles, where he was paid and lived with his family. On September 30, 1953, Collins was driving a regular return trip from Phoenix to Los Angeles. Near Ehrenburg, Arizona a bus tire blew out and the resulting accident caused Collins' death. It was found by the Industrial Commission that the American Buslines, Inc., was not certified by the Arizona Corporation Commission to engage in intrastate commerce and that the bus company operated exclusively in interstate commerce. It was further found that Collins was covered by the workmen's compensation provisions of the state of California.

The Commission concluded that it was without jurisdiction to entertain petitioner's claim for the reason that decedent was not regularly employed in Arizona as that term is used in our workmen's compensation statute, Section 56-928, A.C.A. (Cum. Supp. 1952). Petitioner appeals from this determination alleging error.

The case presents two questions: (1) was decedent, as a matter of law, not regularly employed in the state as contemplated by our workmen's compensation statute; and (2) is the Arizona Indus-

exclusively in interstate commerce are without coverage of any kind. The problem is therefore resolved to the determination of which state's laws should be given effect for if one has a greater or superior right to the enforcement of its Workmen's Compensation Act, then it is the other which imposes the burden.

It is my opinion that where as in this case the deceased was regularly employed in Arizona and the accident occurred in Arizona and the laws of the state of Arizona specifically provide compensation, it ought not to be held that the state of Arizona is unable to, does not have the jurisdiction to award compensation, for the result is to hold that the constitution and the laws of the state of Arizona in Arizona become and are subordinate to the laws of the state of California. The laws of the state of Arizona operating within the territorial limits of Arizona should be held to be paramount and superior to the laws of the state of California having extra-territorial effect. Clearly the decision in this case, having the opposite result, abdicates a portion of the sovereignty of the State to the legislature of another state and in so doing must have disregarded sound legal principles which ought to control its disposition.

The constitution of this state unequivocally demands the payment of compensation to the deceased's dependents:

> "The legislature shall enact a Workmen's Compensation Law applicable to workmen engaged in manual or mechanical labor * * * by which compensation *shall be required to be paid* to any such workman in case of his injury and to his dependents * * * in case of his death, * * *". (Emphasis supplied.) Article 18, Section 8, Constitution of Arizona.

There are no conditions attached to this constitutional mandate. The compensation *must be paid* to the employees designated by the legislature. That designation is equally explicit and mandatory:

trial Commission without jurisdiction in this case for the reason that petitioner was killed while engaged exclusively in interstate commerce and covered by the workmen's compensation laws of California?

The Commission held that decedent was not regularly employed within the contemplation of our workmen's compensation laws for the reason that he was hired outside of this state and divided his work between Arizona and California. The Commission based this conclusion on our decision of Industrial Commission v. Watson Bros. Transp. Co, Inc., 75 Ariz. 357, 256 P. 2d 730 (1953). Petitioner contends that this definition of "regularly employed" is without support in our statute.

On reviewing the Watson case, supra, it is to be noted that the question directly presented there was whether imposition of our workmen's compensation laws so as to obtain insurance premiums from an interstate employer would constitute an undue burden on interstate commerce. The case did not concern a claim for compensation by an injured employee. We held that the Commission could not require an employer to pay insurance premiums covering employees engaged in interstate commerce, who lived and were hired in other states, and who were covered by the workmen's compensation laws of another state while within Arizona. It was our view that this would compel the employer to obtain duplicate protection, and that such double premium payment would be an undue burden on interstate commerce. The employees in question were able to present their claims for injuries received in Arizona in another jurisdiction, for if such employees were not covered by the workmen's compensation laws of another state then there would have been no duplication upon which an undue burden could be said to exist, and in that event we pointed out that under the authority of Hall v. Industrial Commission of Ohio, 131 Ohio St. 416, 3 NE 2d 367 (1936), there would be no constitutional restriction on the imposition of our workmen's compensation laws. The theory of the Watson decision was that an

injured employee was to be limited in his choice of jurisdictions but not excluded altogether from an opportunity to benefit under workmen's compensation laws.

There is a vast distinction between the holding of the Watson case, supra, and the language found there and relied upon by the Commission. The definition of "regularly employed" followed by the Industrial Commission excludes employees from the benefits of our workmen's compensation statute without any consideration of their coverage in other jurisdictions. In short, such employees may be left remediless under this definition.

We feel constrained to review the construction of the term "regularly employed" enunciated in the Watson case and followed by the Commission here, for two reasons; first, the Watson case did not directly raise the question of the status of a claim by an injured employee who divides his work between this and another state as does the case at bar, and secondly, we hesitate to construe our workmen's compensation laws in a manner as to exclude employees injured in Arizona unless such construction is clearly required by the terms of the statute.

We have stated many times that our workmen's compensation laws are to be liberally construed, State v. Pressley, 74 Ariz. 412, 250 P. 2d 992 (1952); Federal Mut. Liability Ins. Co. v. Industrial Commission of Arizona, 31 Ariz. 224, 252 P. 512 (1926); to place the burden of industrial accidents on industry rather than on the employee or the public. Statutory construction which excludes employees from its protection will require specific language to that effect. Marshall v. Industrial Commission, 62 Ariz. 230, 156 P. 2d 729 (1945). Ambiguity is insufficient for then the question is to be resolved in favor of the employee rather than against him. English v. Industrial Commission, 73 Ariz. 86, 237 P. 2d 815 (1951); Ossic v. Verde Central Mines, 46 Ariz. 176, 49 P. 2d 396 (1935).

The term "regularly employed" is defined in Section 56-928 (a), A.C.A. (1952 Cum. Supp.) as

"* * * all employments, whether continuous throughout the year or for only a portion of the year, in the usual trade, business, profession or occupation of an employer."

The statute does not require that an employee hired elsewhere must work exclusively or continuously within this state to be considered regularly employed. A portion of the year is sufficient. Decedent had been employed by respondent-employer since 1944 to the time of his death. When killed in Arizona decedent was following a bus schedule which systematically required him to spend approximately forty percent of his working time in this state. Decedent worked "only a portion of the year" in this state but that is all the statute requires. We find no specific language in our statute indicating that when decedent was killed in Arizona he was not regularly employed within the provisions of Section 56-928 (a), supra.

Should the fact that decedent did not work exclusively within this jurisdiction affect our decision? We think not. An employee injured while within a jurisdiction temporarily has been held entitled to compensation in that state where the injury occurred, Johnson v. El Dorado Creosoting Co., (La. C.A.); 71 So. 2d 613 (1954); Pacific Employers Ins. Co. v. Industrial Accident Commission of California, 306 U.S. 493, 59 S.Ct. 629, 87 L.Ed. 940 (1939); and even if some other jurisdiction would entertain the claim. The paramount interest of the state where the injury occurs was recognized in Pacific Employers Ins. Co. v. Industrial Accident Commission of California, supra, where the court observed at 503:

"* * * Few matters could be deemed more appropriately the concern of the state in which the injury occurs or more completely within its power. * * * (than) the bodily safety and economic protection of employees injured within it."

In support of this view Larson points out in 2 Larson, The Law of Workmen's Compensation, 382, section 87.23 (1952):

"* * * the physical presence of the injured man within the state must concern the state. His medical and hospital bills are owed to local residents, who should not be required to go to

> foreign states for payment; the witnesses to the accident are within the state, and most of the best evidence bearing on the circumstances of the injury; * * * and, * * * the mere presence of a disabled and destitute human being within a state's borders is a social problem of concern to that state since the man may become a public charge if not provided for by compensation law."

The accident, when it occurs here, leads to all the consequences which our workmen's compensation laws were designed to avoid. Where an employee has been and where he may go cannot alter what occurs while he is here, and the latter is the concern of this state. Ocean Accident & Guarantee Corporation, Ltd. v. Industrial Commission of Arizona, 32 Ariz. 275, 257 P. 644 (1927). We see no limitation in the language or policy of our workmen's compensation laws which would compel us to conclude that the people of Arizona have not intended to protect employees or themselves from absorbing the impact of industrial accidents occurring in Arizona because an employer requires his employees to divide their work between two states, and to the extent our case of Industrial Commission v. Watson Bros. Transp. Co., Inc., supra, indicates the contrary it is repudiated.

The next question presented by this appeal is whether the commerce clause, U.S. Constitution, Article I, Section 8, makes inapplicable our workmen's compensation laws for the reason that decedent was engaged exclusively in interstate commerce when killed in Arizona, and was covered under the workmen's compensation laws of California.

There appears to be no federal legislation specifically or impliedly prohibiting the states from applying workmen's compensation laws to the employees of interstate motor carriers. The Federal Motor Carrier Act of 1935, 49.U.S.C.A. Sec. 301, et seq., does not alter this view for it contains no provisions for compensating injured employees or language which restricts the states. Basham v. Southeastern Motor Truck Lines, Inc., 184 Tenn. 532, 201 S.W. 2d 678 (1947); Hall v. Industrial Commission, supra; Etters v.

Trailways of New England, Inc., 43 NYS 2d 884 (1943); State ex rel Washington Motor Coach Co. v. Kelly, 192 Wash. 394, 74 P. 2d 16 (1937). This has been recognized by us in Industrial Commission v. Watson Bros. Transp. Co., supra.

While no specific federal legislation prohibits the application of state workmen's compensation laws this does not mean that no restraints exist upon state activities. A further limitation must be recognized. In Southern Pac. Co. v. State of Arizona, 325 U.S. 761, 65 S.Ct. 1515, 89 L.Ed. 1914 (1945) (the train limit case), the U.S. Supreme Court observed, in part, at 767:

> "Although the commerce clause conferred on the national government power to regulate commerce, its possession of the power does not exclude all state power of regulation. * * * it has been recognized that, in the absence of conflicting legislation by Congress, there is a residuum of power in the state to make laws governing matters of local concern which nevertheless in some measure affect interstate commerce or even, to some extent, regulate it. But * * * the states have not been deemed to have authority to impede substantially the free flow of commerce from state to state, * * *." (Citations omitted.)

Therefore, the question we are faced with is whether application of our workmen's compensation laws would constitute an undue burden on interstate commerce under the facts of this case, in the absence of federal legislation.

In the Watson case we held that exacting double premiums, under the facts there, would be an undue burden. The case at bar involves a claim for compensation rather than a suit to obtain insurance premiums, and the possibility that double compensation would result from an award in this and another state is highly improbable. Under the doctrine of Magnolia Petroleum Co. v. Hunt, 320 U.S. 430, 64 S.Ct. 208, 88 L.Ed. 149, 150 A.L.R. 413 (1943), the prior award would be res judicata between the parties and entitled to full faith and credit, and under the modifying opinion of the subsequent case of Industrial Commission of Wisconsin v. McCartin, 330 U.S. 622, 67 S.Ct. 886, 91 L.Ed. 1140,

169 A.L.R. 1179 (1947), a first award would be credited to the second and result in only one total compensation. Yet while duplicate compensation is no threat, can jurisdiction to establish liability under our laws be reconciled with our holding in the Watson case? Premium payments, under our laws, are for the purpose of insuring against possible liability under our laws. If no jurisdiction exists upon which the Arizona Industrial Commission can lawfully exact premiums, does that necessarily imply that we are without jurisdiction to establish liability on the same set of facts? We fail to see how the rules may differ.

If jurisdiction exists to find employer liability, the reason for premiums exists in full force—the threat of this liability. Employers insure for no other reason. An employer who engages in business in various jurisdictions, all of which will extend jurisdiction to an injured employee for the same injury, cannot anticipate which state's laws will be invoked by the employee. Under such conditions his only recourse would be to establish protection from liability in all such states by the payment of insurance premiums. The threat of liability would require duplicate premiums and it is this duplication which creates the undue burden on interstate commerce. It is the need imposed by the laws of our state to insure twice that constitutes the undue burden, not the manner in which this duplication is obtained. We hold that to assume jurisdiction under our workmen's compensation laws on the facts of this case would constitute an undue burden on interstate commerce. Since the respondent-employer here is engaged exclusively in interstate commerce the case of Holly v. Industrial Commission, 142 Ohio St. 79, 50 NE 2d 152 (1943), cited by petitioner, is not in point.

Petitioner argues that to deprive the Commission of jurisdiction may leave her remediless in a limbo of interstate commerce. The thought is that if we decline jurisdiction for the reason that decedent was engaged in interstate commerce then other states may do the same; and since no federal compensation plan exists no remedy would be available. We fail to see how this result can

obtain under our decision here or in the Watson case. We do not decline jurisdiction merely for the reason that decedent was engaged in interstate commerce, but in view of an additional consideration—that he was also covered in another jurisdiction. If decedent had not been covered in California then there would be no duplication upon which to find an undue burden; it is not the application of state workmen's compensation laws which is prohibited under our interpretation of the commerce clause but a double application.

Petitioner contends that we should not defer to the workmen's compensation laws of another state because we cannot control such other jurisdictions and are unable to provide relief to petitioner. The error in this contention is twofold. The existence of duplicate protection imposing a burden on interstate commerce requires at least two states. Between the two it is not automatically the obligation of Arizona to defer to the other in the interests of interstate commerce. A preliminary question, latent here as in the Watson case, must first be answered; which of the two imposes the undue burden? It is to be noted that both in the Watson case and the case at bar the employees involved were those hired and residing in a state other than Arizona, and therefore we choose to adhere to our holding in the Watson case, that the application of our workmen's compensation laws under these facts would constitute an undue burden upon interestate commerce. A finding that the undue burden is imposed by California laws would be based on the view that the situs of the accident is of such importance that Arizona may impose its own laws, but the predicament of the interstate employer is then obvious. He cannot anticipate where accidents may occur to his employees, and to protect himself must conform to the workmen's compensation laws of all states in which his employees work. In short, the multiple premiums we find unduly burdensome would again be required.

Moreover, by adopting this view, which we decline to do, consistency would require us to say that when an employee hired in

Arizona engages in interstate commerce and suffers injury in another state, application of our workmen's compensation laws would impose the undue burden; therefore, the extraterritorial coverage given such employees hired in Arizona would be eliminated.

Petitioner contends that the undue burden we find in requiring an interstate employer to make two or more premium payments for the same protection could be avoided if we would apportion our premiums. Under this theory, if an employee divides his labor equally between this and another state, the premiums would be placed upon only half of his total wages since only half the risk of injury occurs here. Beyond the territorial limits of the state the application of our workmen's compensation laws would cease entirely and no double protection would be imposed by our laws.

In addition to the fact that we find no authority in our statute upon which apportionment could be made, this theory would lead to an inequitable result. Under such a view an employee, whether hired in Arizona or not, dividing his labors equally between this state and another in interstate commerce, could expect only approximately half the award he would receive in the event of his injury or death if not in interstate commerce. We cannot ignore this consequence and see no basis in reason or law compelling us to adopt a view which forces such employees to absorb the financial burden of receiving only half the award benefits to which their accidents would normally entitle them.

This result is due to the interconnection of the premium assessed, the wage base and the fact that accident awards relate to both. See: Brisendine v. Skousen Bros., 48 Ariz. 416, 62 P. 2d 326 (1936), 112 A.L.R. 1092; Gene Autry Productions, Inc. v. Industrial Commission, 67 Ariz. 290, 195 P. 2d 143 (1948). If this state could only assess premiums upon that part of the employee's income which is attributable to his work in Arizona, then in the event of an injury his average monthly wage base could only be computed on the same amount. Premiums could not be assessed on

part of his income and the award on *all* of his income, such a procedure would soon impair the public fund and contravene Section 56-923, A.C.A. 1939, and our case of Gene Autry Production, Inc. v. Industrial Commission, supra. Our case of Faulkner v. Industrial Commission, 71 Ariz. 76, 223 P. 2d 905 (1950), illustrates the consequences of adopting petitioner's view. In that case the employee worked nights at a race-course, receiving $10 a night. While his services were covered by the workmen's compensation laws they were required only a few nights a month. During the day the employee worked for the Veteran's Administration where he received $300 a month. His employment with the Veteran's Administration was not subject to our workmen's compensation laws. On his first night at the race-course he was injured. The question was whether his income from the Veteran's Administration should be included in computing his wage base upon which his award would rest, or if only the amount he received from the race-course could be considered. We held that the income received from the Veteran's Administration, which was not subject to our workmen's compensation laws, could not be included and observed:

> "In this case the Veteran's Administration was not covered nor subject to coverage and of course paid no premiums to the Commission on the wages paid petitioner * * * it is only reasonable that the rule of liability contemplates that premiums be paid to the Commission for the benefit of its insurance fund on the amount of wages of the injured employee upon which the Commission establishes its awards * * *. In this case the Commission would be derelict in its duty if it paid compensation to petitioner on the basis of his loss of earning capacity by including his earning power with an employee who paid no premiums on its wages to petitioners and who was neither covered nor could be covered by a policy with the Commission."

See also Walton v. Electric Service Co., 121 Kan. 480, 247 P. 846 (1926).

While the Faulkner case could be distinguished from the situation contemplated by petitioner in that the interstate employee

PHELPS, J., Specially Concurring:

I concur in the result reached by the majority opinion but disagree with the conclusion reached by the court that Collins was "regularly employed" in Arizona as defined by the provisions of section 56-928, A.C.A. 1939. (See Industrial Commission v. Watson Bros. Trans. Co., 75 Ariz. 357, 256 P. 2d 730.)

It seems perfectly clear to me that the language employed by the legislature contemplates that the contract of employment must have been made in Arizona. Under the rule laid down in the majority opinion, if Collins, employed in California, had been working only on what is known as the "extra list", that is, when there happened to be work available for him which only occurred five, six or seven times during the course of a year, and on those occasions drove through the state of Arizona and was injured while within the borders of the state, his claim is compensable except for the fact that it constitutes a burden upon Interstate Commerce.

There is a possibility that a case could arise under such circumstances where there would not be a burden upon Interstate Commerce.

M. T. PHELPS
Justice

STRUCKMEYER, J. (Dissenting):

I agree with the majority of this court in their conclusion that the decedent was regularly employed in the state of Arizona and concur that Industrial Commission v. Watson Bros. Transportation Co., Inc., 75 Ariz. 357, 256 P. 2d 730, be overruled as to that portion of the opinion which places a contrary interpretation upon the phrase "regularly employed". However, I cannot agree with the conclusion of the majority that the Arizona Industrial Commission is without jurisdiction to award compensation to the dependents of Adolphus Henry Collins.

Deceased was employed by respondent-employer, American

Buslines, Inc., as a bus driver on a run from Los Angeles, California, to Phoenix, Arizona, and return. While driving a bus in the regular course of employment he was killed in an accident occurring in Arizona. An employee, 'regularly employed' in Arizona, is compensated by the Arizona law for injuries incurred in the course of his employment; his dependents are compensated in the event of his death. Seemingly in California, if California is the place of employment, an injured employee or his dependents are compensated for injuries or death occurring both inside and outside of the state. Thus the Collins dependents, being covered by the laws of both states, would ordinarily be able to recover compensation in either.

That petitioner has very substantial rights of which she is deprived by the decision in this case becomes apparent in the light of certain additional facts. Petitioner's claim for compensation filed with the Industrial Commission discloses that decedent's average monthly wage was approximately $700 and that he left surviving in addition to petitioner, as widow, a child of the approximate age of one month. By Section 56-953 A.C.A. 1939 (amended by laws of 1954) petitioner as surviving widow is entitled to receive thirty-five per cent of decedent's average monthly wage until death or remarriage, and the child an additional fifteen per cent until such child reaches the age of eighteen years. Fifty per cent of decedent's average monthly wage is $350 a month. Under the laws of the state of California the maximum that petitioner and surviving child can receive, assuming they receive the maximum, is $30 per week for two hundred and forty weeks (2 Larson, Workmen's Compensation, Table 15, page 546). The difference between what the laws of the state of Arizona and the laws of the state of California give to petitioner and her child, if extended to the child's eighteenth birthday, is nearly $70,000.

This court held in Industrial Commission v. Watson Bros, supra (hereinafter referred to as the Watson Bros. case) that if an employer paid a premium under the law of another state to insure

"Every employee,[2] hereinbefore designated, who is injured, and the dependents of every such employee who is killed, by accident arising out of and in the course of his employment, wheresoever such injury has occurred, unless purposely self-inflicted, shall be entitled to receive, *and shall be paid* such compensation for loss sustained on account of such injury or death, and such medical, nurse and hospital services and medicines, and such amount of funeral expenses, in case of death, as are herein provided." (Emphasis supplied.) Section 56-931 A.C.A. 1939.

The compulsory and mandatory nature of the constitution and implementing statutes has been recognized by this court in positive and unequivocal language:

"* * * This act, so far at least as the employer is concerned, is compulsory in its nature; he has no option as to whether he shall accept or reject it, and the whole language both of the constitutional amendment authorizing it and of the act itself shows clearly that they were based, * * * upon the inherent right of the state, recognized by the Supreme Court of the United States in the cases above cited, by virtue of its police power to establish certain rules regulating the status of employer and employee. We therefore hold that the present Arizona Workmen's Compensation Act is neither elective nor contractual in its nature, but, on the contrary, that it rests upon the police power to regulate the status of employer and employee within the state of Arizona, and that no contract, express or implied, made within or without the state of Arizona, unless expressly so authorized by our law, can of itself affect the rights and duties of such status. It is governed, so far as this subject is

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[2] It has been assumed by counsel throughout that respondent-employer, American Buslines, Inc., is an employer whose employees are subject to the Workmen's Compensation Act of this state.

"EMPLOYERS SUBJECT TO LAW. — (a) Employers subject to the provisions of this article are: 1. the state, 2. each county, city, town, municipal corporation, and school district, and, 3. every person who has in his employ three (3) or more workmen or operatives regularly employed in the same business or establishment, under contract of hire, except agricultural workers not employed in the use of machinery, and domestic servants; * * *". Section 56-928 A.C.A. 1939, as amended by Laws of 1945, Chapter 33, Section 1.

concerned, solely by the provisions of the Arizona statutes, and nothing else. *The right of Goodson to recover compensation, so far as the Arizona tribunals are concerned, therefore, was governed by the Workmen's Compensation Act of Arizona, and the California statute would apply only in so far as the Arizona statute expressly allowed it to do so.*" (Emphasis supplied.) Ocean Accident and Guarantee Corp. v. Industrial Commission, 32 Ariz. 275, 282, 257 P. 644.

Since, by the explicit language of the constitution, the statute and prior judicial construction, it cannot be denied that petitioner is entitled to compensation in Arizona for the death of her husband, it would seem to follow logically that the Industrial Commission of this state has jurisdiction to award such compensation and it must be awarded unless the state of Arizona or its laws be held subordinated to the state of California or its laws within the territorial borders of Arizona. Such a result is contrary to the public policy of this state and conflicts with accepted judicial construction. The doctrine of comity by which foreign laws are given effect yields to the positive law of the forum where the governmental interest of the forum is superior to the interests of the foreign jurisdiction.

"* * * A rigid and literal enforcement of the full faith and credit clause, without regard to the statute of the forum, would lead to the absurd result that, wherever the conflict arises, the statute of each state must be enforced in the courts of the other, but cannot be in its own. Unless by force of that clause a greater effect is thus to be given to a state statute abroad than the clause permits it to have at home, it is unavoidable that this Court determine for itself the extent to which the statute of one state may qualify or deny rights asserted under the statute of another. [Citing cases.]

"The necessity is not any the less whether the statute and policy of the forum is set up as a defense to a suit brought under the foreign statute or the foreign statute is set up as a defense to a suit or proceeding under the local statute. In either case, the conflict is the same. In each, rights claimed under one statute prevail only by denying effect to the other. In both the conflict is to be resolved, not by giving automatic effect to the full faith

and credit clause, compelling the courts of each state to subordinate its own statutes to those of the other, but by appraising the governmental interests of each jurisdiction, and turning the scale of decision according to their weight.

"The enactment of the present statute of California was within state power and infringes no constitutional provision. Prima facie every state is entitled to enforce in its own courts its own statutes, lawfully enacted. One who challenges that right, because of the force given to a conflicting statute of another state by the full faith and credit clause, assumes the burden of showing, upon some rational basis, that of the conflicting interests involved those of the foreign state are superior to those of the forum. * * *" Alaska Packers Association v. Industrial Accident Commission, 294 U.S. 532, 79 L. Ed. 1044, 55 S. Ct. 518.

And see Buckingham Transp. Co. v. Industrial Commission, 93 Utah 342, 72 P. 2d 1077.

The conflict of laws is to be resolved in favor of the state where the injury occurs:

"* * * Under these circumstances, the governmental policy of California weighs more heavily in the scale of decision than the law of Massachusetts, and the conflict in laws must be resolved in favor of the state where the injury occurred." Pacific Employers Insurance Co. v. Industrial Accident Commission, 10 Cal. 2d 567, 75 P. 2d 1058;

affirmed in the Supreme Court of the United States:

"Full faith and credit does not here enable one state to legislate for the other or to project its laws across state lines so as to preclude the other from prescribing for itself the legal consequences of acts within it." Pacific Employers Insurance Co. v. Industrial Accident Commission, 306 U.S. 493, 83 L. Ed. 940, 59 S. Ct. 629;

and is in accord with the experts in the field of workmen's compensation:

"In short, so long as there are conflicting but real governmental interests in two jurisdictions, the worker ordinarily *has his choice of collection* in either the place of hire or place of injury or place of business localization. This is a valuable right,

as in one state the medical rights might be limited to $400 and his compensation rights to $5,000, whereas in the other, medical bills and compensation might be unlimited and could amount to over $15,000 each. The employee's or dependent's rights, if based upon a real interest, depend on the law of the forum which he voluntarily chooses. The full faith and credit clause of the federal constitution is usually held not to be a bar to the employee's choice or election so long as it is obnoxious to the law of the forum to refuse him the local remedy or to refer him to the other state." Horovitz, Injury and Death under Workmen's Compensation Laws, p. 39.

"* * * The view that, whatever other arrangements it may make about applicability, each state should unreservedly take responsibility for injuries within its borders rests not upon any survival of delictual conflicts rules but on simple statutory construction, on the unavoidable interest of the state in an injury which may affect its own citizens more than those of any other state, and on the desirability of providing a backstop liability to which claimant can turn when he finds himself on the wrong side of all other extraterritorial rules." 2 Larson, Workmen's Compensation, 385, Sec. 87.25.

Not only does the public policy of this state require that a workman be compensated for injuries or that his dependents be compensated in case of his death, but it requires that the compensation be *in the manner and in the amount* as the laws of this state provide. Anything less or different is not only in derogation of and contrary to the avowed general welfare of this sovereignty but denies to an injured employee or his dependents, as the case may be, the equal protection of laws required by the constitution of this state, Article 2, Section 13, and the constitution of the United States.

"The equal protection clauses of the 14th Amendment and the state constitution have for all practical purposes the same effect. They constitute a guaranty that all persons subject to state legislation shall be treated alike under similar circumstances and conditions in the privileges conferred and liabilities imposed." Valley National Bank of Phoenix v. Glover, 62 Ariz. 538, 554, 159 P. 2d 292.

"The equal protection of the laws is 'a pledge of the protection of equal laws.' Yick Wo v. Hopkins, 118 U.S. 356, 369, 30 L. Ed. 220, 226, 6 S. Ct. 1064. Manifestly, the obligation of the State to give the protection of equal laws can be performed only where its laws operate, that is, within its own jurisdiction. It is there that the equality of legal right must be maintained. That obligation is imposed by the Constitution upon the states severally as governmental entities,—each responsible for its own laws establishing the rights and duties of persons within its borders. It is an obligation the burden of which cannot be cast by one State upon another, and no State can be excused from performance by what another State may do or fail to do. That separate responsibility of each state within its own sphere is of the essence of statehood maintained under our dual system. It seems to be implicit in respondents' argument that if other States did not provide courses for legal education, it would nevertheless be the constitutional duty of Missouri when it supplied such courses for white students to make equivalent provision for negroes. But that plain duty would exist because it rested upon the State independently of the action of other States. We find it impossible to conclude that what otherwise would be an unconstitutional discrimination, with respect to the legal right to the enjoyment of opportunities within the State, can be justified by requiring resort to opportunities elsewhere. That resort may mitigate the inconvenience of the discrimination but cannot serve to validate it." Missouri ex rel Gaines v. Canada, 305 U.S. 337, 83 L. Ed. 208, 59 S. Ct. 232.

The consequence of the majority holding in both this and the Watson Bros. case leads to the absurd result, in the language of Alaska Packers Association v. Industrial Accident Commission of California, supra, that the statutes of this state cannot be enforced in this state or in the courts of this state because of an obligation claimed to be incurred under the statutes of the state of California. The people of Arizona acting through their legislature, so long as these decisions stand unreversed, are barred from the exercise of the right inherent in every sovereignty—to pass laws for the internal regulation and government of the state necessary to preserve the public order and promote the general welfare. Workmen

within Arizona engaged in interstate commerce become victims of the whims and vagaries of the various legislatures of the remaining forty-seven states depending upon where the employer procures his insurance. And:

> "* * * As the Pacific Employers case held, the physical presence of the injured man within the state must concern the state. His medical and hospital bills are owed to local residents, who should not be required to go to foreign states for payment; the witnesses to the accident are within the state, and most of the best evidence bearing on the circumstances of the injury; the state's safety laws and standards may be involved; and, as the Alaska Packers case stressed, the mere presence of a disabled and destitute human being within a state's borders is a social problem of concern to that state since the man may become a public charge if not provided for by compensation law." 2 Larson, Workmen's Compensation, 382, Section 87.23.

It therefore appears that the assumption in the Watson Bros. case that Arizona would unduly burden interstate commerce in enforcing its Workmen's Compensation Act by requiring the payment of premiums to the state compensation fund is unsound. That unsoundness has contaminated the opinion in this case leading to the complete denial of petitioner's rights as expressed in the constitution and laws of this state. A decision so unsound in principle and so harsh and unjust in result should be positively and unambiguously reversed.

Now, I have said that it is my opinion that the Watson Bros. case should be reversed but since the principle established is being adhered to as the law of this jurisdiction, a recognition of the limitations of the holding therein will do much to limit the pernicious effect. The Watson Bros. case was an action to restrain the collection of premiums to be paid to the state compensation fund. The premiums sought to be collected were admittedly in an amount sufficient to insure the employees of Watson Bros. Transportation Co. for the hazards of the entire trip both within and without the state. The court did not hold that the extraction of a lesser premium in an amount sufficient to compensate an injured

workman or his dependents for the difference between what the laws of the state of Arizona allowed and the laws of the foreign jurisdiction allowed constituted an undue burden on interstate commerce, and did not hold that an employer was not compelled to otherwise comply with the Workmen's Compensation Act of this state under circumstances where a double premium was not imposed. If these limitations are recognized, this court can give full effect to the statutes of the state of Arizona.

The purpose of both Workmen's Compensation Acts can be fully carried out if an employer doing business in the state of Arizona is required to carry that amount of insurance sufficient to compensate his employees for the difference, if any, between what the foreign state and what the state of Arizona will pay. The employee in the case of his injury or his dependents in case of his death can obtain compensation in the place of his employment and Arizona can pay the difference between the two states, if any. It is now accepted in leading jurisdictions that an award in one state does not bar a further and subsequent award in the second based on the difference in the amounts allowed in the two states, Industrial Commission of Wisconsin v. McCartin, 330 U.S. 622, 91 L. Ed. 1140, 67 S. Ct. 886, 169 A.L.R. 1179; Industrial Indemnity Exchange v. Industrial Accident Commission, 80 Cal. App. 2d 480, 182 P. 2d 309; Cline v. Byrne Doors, Inc., 324 Mich. 540, 37 N.W. 2d 630, 8 A.L.R. 2d 617; Spietz v. Industrial Commission, 251 Wis. 168, 28 N.W. 2d 354; Sorenson v. Standard Construction Co., Inc., 238 Minn. 68, 55 N.W. 2d 630; Cook v. Minneapolis Bridge Construction Co., 231 Minn. 433, 43 N.W. 2d 792; Baduski v. S. Gumpert Co., Inc., 102 N.Y.S. 2d 297, 277 App. Div. 591.

"Award already had under the Workmen's Compensation Act of another state will not bar a proceeding under an applicable Act, unless the Act where the award was made was designed to preclude the recovery of an award under any other Act, but the amount paid on a prior award in another state will be credited on the second award." Restatement of the Law, Conflict of

Laws, 1948 Supplement, Section 403.

By the recognition of this principle an employee regularly employed in Arizona engaged in interstate commerce will be in the position of being assured that the state of Arizona is providing a "backstop" liability to which he may turn in the event he finds himself on the wrong side of extra-territorial rules. This state will have unreservedly taken on its responsibility for injuries which affect the general welfare of the people within the borders of the state and the employees will be compensated, if not in accord with the spirit, at least with the general tenor of the law. This does not shift the burden of employees injured in Arizona to compensation funds of other states for the reason that other states having laws extra-territorial in coverage must have established a rate consistent with the hazards involved. The premium paid in the foreign jurisdiction is presumptively based upon the statutory compensation allowed there and the premium in this jurisdiction need only be that which is necessary to provide compensation for the difference. The payment of the additional premium in Arizona by an employer necessary to compensate for the additional amount allowed is not a double premium for the reason that the employer is not insuring against the same loss in two states.

There is yet another and greater reason why the majority err in denying the Industrial Commission the jurisdiction to enter an award in petitioner's favor under the circumstances of this case. By statute, Section 56-932 A.C.A. 1939, it is provided in part as follows:

> "SECURING COMPENSATION — ALTERNATIVE METHODS — REGULATIONS. — Employers, but not including the state or its legal subdivisions, shall secure compensation to their employees in one of the following ways;
>
> "1. By insuring and keeping insured the payment of such compensation with the state compensation fund;
>
> "2. By insuring and keeping insured the payment of such compensation, with a corporation or association authorized to transact the business of workmen's compensation insurance in the state * * *;

"3. By furnishing to the commission satisfactory proof of financial ability to pay direct the compensation in the amount and manner when due as herein provided. * * *"

The statute gives an employer the choice of three methods to insure that his employees are compensated. He may insure with the state compensation fund, insure with a private insurance carrier or become a self-insurer. He is not compelled to adopt any particular method but is permitted to choose the method which is least burdensome. The choice allowed by the statute removes the claimed undue burden on interstate commerce because it provides a means by which an employer can avoid the payment of a double premium.

By the provisions of sub-section two an employer may select an insurance carrier qualified to do business in both Arizona and California, thereby insuring against the risks occasioned by the employment in both states. While it is undoubtedly true that a private insurance carrier would require the payment of a higher premium to insure against the risks of doing business in Arizona because the statutes of this state afford to the employee greater compensation than do the statutes of the state of California, interstate commerce would not thereby be unduly burdened. It is not every burden which is an undue burden.

"Protection against accidents, as against crime, presents ordinarily a local problem. Regulation to ensure safety is an exercise of the police power. It is primarily a State function, whether the locus be private property or the public highways. Congress has not dealt with the subject. Hence, even where the motorcars are used exclusively in interstate commerce, a State may freely exact registration of the vehicle and an operator's license, (citing cases); may require the appointment of an agent upon whom process can be served in an action arising out of operation of the vehicle within the state, (citing cases); and may require carriers to file contracts providing adequate insurance for the payment of judgments recovered for certain injuries resulting from their operations. (Citing cases.) The State may exclude from the public highways vehicles engaged exclusively

in interstate commerce, if of a size deemed dangerous to the public safety, (citing cases). Safety may require that no additional vehicle be admitted to the highway. The Commerce Clause is not violated by denial of the certificate to the appellant, if upon adequate evidence denial is deemed necessary to promote the public safety. * * *." Bradley v. Public Utilities Commission, 289 U.S. 92, 77 L. Ed. 1053, 53 S. Ct. 577.

Similarly by the provisions of sub-section three an employer as a self-insurer can wholly avoid the payment of any premium.

It should be pointed out again that the holding of the Watson Bros. case was limited to the facts presented in that case, namely, that an attempt was being made to collect a premium for the state compensation fund. That case did not consider the question of whether an interstate employer could disregard completely all the other applicable provisions of the Workmen's Compensation Act of this state. The majority opinion, in denying petitioner an award, permits an employer to escape all responsibility under the Workmen's Compensation Act in doing business in this state and the very evil which was so clearly foreseen by this court shortly after the adoption of the Act has come to pass:

"* * * If we accept the construction placed by petitioner upon the law, it will be entirely possible for large employers of labor to select a state where the benefits of the Compensation Law are extremely small, and by making their contracts of employment in that state, reduce to a great extent the benefits which the public policy of this state has declared should accrue to the injured workman. We do not think a construction making such a thing even possible is one which should be adopted unless it is unavoidable. The rule which we have laid down will make benefits for the injuries of the same kind arising under the same circumstances uniform and certain, and insure that all persons holding the status of employee within this state will be insured the protection of its beneficent laws." Ocean Accident and Guarantee Corp. v. Industrial Commission, supra.

For the foregoing reasons and each of them I dissent.

FRED C. STRUCKMEYER, JR.

Justice

III

Supreme Court
State of Arizona
Phoenix
October 4th, 1955

Messers. Lewis, Roca, Scoville & Beauchamp,
919 T & T Bldg.
Phoenix

Dear Sirs:

Re: No. 5977: Joan Greenway Collins et al vs
American Buslines, and
INDUSTRIAL COMMISSION.

The court today entered its order denying petitioner's motion for a rehearing in this case. Mandate will, therefore, issue forthwith to the Industrial Commission under the opinion rendered June 28th, 1955.

Very truly yours,
EUGENIA DAVIS
Clerk

cc to
Robert K. Park,
Industrial Commission.

CONCLUSION

For the reasons given herein, and in the interests of maintaining the construction of state statutes at the state level in instances where no burden of any nature has been imposed upon the federal authority, it is respectfully submitted that this Court should not concern itself with the subject matter presented and therefore petition for writ of certiorari should be denied.

Respectfully submitted:

JOHN R. FRANKS
Arizona State Office Bldg.
1640 W. Adams Street
Phoenix, Arizona
Attorney for Respondent, The
Industrial Commission of Arizona

December 1955.

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HAROLD B. WILLEY, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1955

JOAN GREENWAY COLLINS, WIDOW, AND CARROLL LEE COLLINS, MINOR CHILD OF ADOLFUS HENRY COLLINS, DECEASED, PETITIONERS,

vs.

AMERICAN BUSLINES, INC., RESPONDENT EMPLOYER, THE INDUSTRIAL COMMISSION OF ARIZONA, RESPONDENT, INSURANCE CARRIER.

MEMORANDUM OF OBJECTIONS TO PETITION FOR WRIT OF CERTIORARI.

JOHN R. FRANKS
Arizona State Office Bldg.
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In the Supreme Court of the United States

JOAN GREENWAY COLLINS, WIDOW, AND CARROLL LEE COLLINS, MINOR CHILD OF ADOLFUS HENRY COLLINS, DECEASED, PETITIONERS,

vs.

AMERICAN BUSLINES, INC., RESPONDENT EMPLOYER, THE INDUSTRIAL COMMISSION OF ARIZONA, RESPONDENT, INSURANCE CARRIER.

MEMORANDUM OF OBJECTIONS TO PETITION FOR WRIT OF CERTIORARI

Petitioner has prayed for the issuance of a writ of certiorari to review the judgment of the Supreme Court of the State of Arizona entered on June 28, 1955, petition for rehearing denied October 4, 1955. Respondent herein, The Industrial Commission of Arizona, objects to the issuance of such writ and submits herewith its Memorandum of Objections:

STATEMENT

Respondent concedes petitioner's statement with reference to entry of opinion below, entry of order denying rehearing, and the accuracy of the appendix material contained in petitioner's brief, pages 11-39, inclusive.

Further, respondent concedes the basic matters alleged in petitioner's statement of the facts.

For the purpose of this presentation, however, we would re-phrase the question presented as follows:

> Whether the workmen's compensation law of the state of the injury *must* be applied to a motor carrier operator in interstate commerce where the claimant is domiciled in, has contracted his hire in, and is fully covered by the compensation laws of, another state.

As to statute and constitutional provisions involved, it is respectfully submitted that in addition to Section 56-928 (a), Arizona Code Annotated 1939 (1952 Supplement), cited by petitioner (petitioner's brief, page 2), the following Arizona statutes embodied in the Arizona Workmen's Compensation Act have a direct applicability to the matter under consideration, as do, in fact, *all* of the statutes of this state constituting the Arizona Workmen's Compensation Act:

> **"Section 56-943. Compensation to workmen hired or injured in or out of state.** If a workman who has been hired or is regularly employed in this state receives a personal injury by accident arising out of and in the course of such employment, he shall be entitled to compensation according to the law of this state even though such injury was received outside of this state. If a workman who has been hired outside of this state is injured while engaged in his employer's business, and is entitled to compensation for such injury under the law of the state where he was hired, he shall be entitled to enforce against his employer his rights in this state if his rights are such that they can reasonably be determined and dealt with by the commission and the courts of this state." (Arizona Code Annotated 1939)

> **"Section 56-965. Employment in interstate commerce.** The provisions of this article shall apply to employers and their employees engaged in intrastate and also in-

terstate and foreign commerce for whom a rule of liability or method of compensation has been or may be established by the United States only to the extent that their mutual connection with intrastate work may and shall be clearly separate and distinguishable from interstate or foreign commerce." (Arizona Code Annotated 1939)

REASONS FOR THE DENIAL OF WRIT

1. The proceedings do not present a federal question open to review here.

At the outset we comment upon the two statutes of the state of Arizona quoted above, Sections 56-943 and 56-965, Arizona Code Annotated 1939. In the instant case, the petitioner, as a claimant before The Industrial Commission of Arizona, did not choose to invoke the jurisdiction of the Commission under Section 56-943, supra. Her claim with the Arizona Commission was a direct claim for benefits under the Arizona Act and payable out of the Arizona State Fund. The existence of said statute, however, is a clear indication of legislative intent on the part of the Arizona legislature to recognize the situation where an employee is hired outside of the state and is covered under the laws of the state where he was hired but who happens to be injured in the state of Arizona. The statutory language gives full recognition to the possible interstate nature of employment and a means is provided for an adjudication of rights in accordance with the laws of the state of workmen's compensation coverage.

Section 56-965, Arizona Code Annotated 1939, supra, gives further indication of the Arizona legislative intent in that the statutory language expresses a definite limitation upon situations arising out of interstate or foreign commerce.

We deem both of the quoted statutes to be an expression of Arizona legislative intent not to impose a burden upon interstate or foreign commerce wherever such imposition can be avoided. These statutes are an integral part of the basic workmen's compensation act construed by the Arizona Court in its opinion below.

The matter presented involves the decision and action of the Supreme Court of the State of Arizona not only in Collins v. American Buslines, Inc., the instant case, but also its decision and action in *Industrial Commission of Arizona v. Watson Brothers' Transportation Co., Inc.*, 75 Ariz. 357, 256 Pac. 2d 730 (1953). In the *Watson Brothers* decision, the Supreme Court of Arizona, in 1953, construed the workmen's compensation laws of the state of Arizona, and by its decision it declined to construe the state's statutes in any manner which would require duplicate premiums of employers who had insured their employees in another state. In the instant case (1955), the same Supreme Court merely reaffirmed its prior interpretation of the state's statutes. This is the simple essence of the situation and it is patent that the matter is not one of federal concern. By its interpretation of the state's statutes, the Supreme Court of the State of Arizona has *not imposed* a burden upon the federal commerce. The choice in this respect certainly lies at the state level, bearing in mind that the state statutes themselves are under consideration.

The opinion of the Court below makes it clear that the Court was dealing with the construction of the Arizona statutes as evidenced by the following language appearing in the decision, cited on page 16 of petitioner's brief:

"* * * We hesitate to construe our workmen's compensation laws in a manner as to exclude employees injured in Arizona unless such construction is clearly required *by the terms of the statute.*" (Emphasis supplied.)

We re-emphasize the fact that in its considerations the Arizona Court had before it the entire Arizona Workmen's Compensation Act and decisions relevant thereto, recognizing, of course, the supremacy of the Constitution of the United States as the supreme law of the land. Nevertheless, the Arizona Court applied the statutes of the state of Arizona, and in so doing, it imposed no burden upon interstate commerce, and the results of its interpretation constitute no infringement upon matters covered by the s u p r e m e law of the land. The Supreme Court of Arizona has merely said that it does not choose to interpret its own statutes to require the payment of duplicate premiums by an employer who has covered his employees in another state. Patently this choice should be left to the state of Arizona.

For the above reasons, we repeat that the real question herein presented is as we have re-phrased it above. In other words, *must* the workmen's compensation laws of Arizona be applied to the employee in interstate commerce where the employee is domiciled in, has contracted for his hire in, and is fully covered by the compensation laws of another state? Or we might ask this question: Will this Court remand and direct that the state law be applied to anyone in interstate commerce who happens to be injured while within the state of Arizona? It is submitted that this latter question answers itself. The basic law of the state of Arizona has been declared in the *Watson Brothers* case,

supra. The declaration is to the effect that duplicate premiums cannot be collected for workmen's compensation insurance coverage. The decision in the instant case has affirmed and applied this basic law. It will thus appear as settled law in the state of Arizona that neither equity nor the statutes of the state require duplicate premiums of employers who might have their employees hired elsewhere and who are covered elsewhere even though working at intervals in the state of Arizona. The position of the Supreme Court of Arizona is made clear by the following language in its decision, cited in petitioner's brief at page 21:

> "* * * We do not decline jurisdiction merely for the reason that decedent was engaged in interstate commerce, but in view of an additional consideration — that he was also covered in another jurisdiction * * *."

In view of the decision of the Supreme Court of the State of Arizona construing the statutes of the state, it would be necessary for petitioner herein to contend that there would be no duplication of premium if there was an apportionment of premium. It is submitted that the Arizona Court in the *Watson Brothers* case, supra, and in its opinion in the instant case, has already construed the state's statutes as being repugnant to an apportionment procedure. It is respectfully submitted that no mandate of this Court or other federal authority could change or review this construction of the state law unless the whole field of workmen's compensation for employees engaged in interstate commerce is preempted by federal legislation.

It is submitted that petitioner's citations of *State Tax Comm. v. Van Cott*, 306 U.S. 511, 514 (1939), and *Perkins v. Benguet Consol. Min. Co.*, 342 U.S. 437, 443,

(1952), are not in point. In the instant case we have the matter clearly resting in the state's construction of its own statutes with no imposition or infringement upon matters reserved for federal jurisdiction.

2. The question is not substantial. The record contains no accurate information concerning the number of truckers or bus drivers who may be involved with the state of Arizona in interstate commerce. Obviously our inquiry would be limited to that consideration. The fact that other states have chosen to construe their own statutes in a particular manner is of no concern here except that the situation emphasizes the right of the state of Arizona to effect its own individual consideration and application. Nothing unusual is presented by petitioner's illustrations.

3. The decision does not conflict with the applicable holdings of this Court. If the Arizona Court, in its decision below, found comfort in the language of *Southern Pacific Co. v. Arizona*, 325 U.S. 761 (1945), it is of no merit here, bearing in mind that the Arizona Court was still construing its own workmen's compensation law statutes in the opinion below, and by its decision it merely declined to construe the state's statutes as requiring the payment of double premiums in the instant fact situation.

Consideration as to whether or not the double premium actually exists (page 6 of petitioner's brief) is not properly before us here. The premium and rate structure of the Arizona system has been construed by the Arizona Court. Construction properly rests at that level.

No. 523

In the Supreme Court of the United States

OCTOBER TERM, 1955

JOAN GREENWAY COLLINS, WIDOW, AND CARROLL LEE COLLINS, MINOR CHILD OF ADOLPHUS HENRY COLLINS, DECEASED, PETITIONERS,

vs.

AMERICAN BUSLINES, INC., RESPONDENT EMPLOYER,
THE INDUSTRIAL COMMISSION OF ARIZONA, RESPONDENT INSURANCE CARRIER.

BRIEF OF PETITIONERS

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clusive as regards injuries received outside this state." While the California statute contains the usual exclusive jurisdiction provision,[1] the provision is not regarded as having extraterritorial application. That point was specifically noted by this Court concerning the California statute in *Alaska Packers Assn. v. Industrial Accident Comm.*, 294 U.S. 532, 540 (1935). As a practical matter, California follows the usual practice of giving a local workmen's compensation remedy in supplement to any remedy which may be given by the workmen's compensation law of another jurisdiction, subject to the policy of avoiding double compensation under the *McCartin* rule. See, for example, including full discussion, *Industrial Indemnity Exchange* v. *Industrial Accident Comm.*, 80 C. A. 2d 480, 182 P. (2d) 309 (1947). In short this case is covered by the second category analyzed in the dissenting opinion in *Carroll* v. *Lanza, supra*: it is one of those in which the forum may apply its own statute rather than that of a sister state because the latter is not of limiting exclusiveness. 349 U. S. at 415.

Not merely does allowance of recovery by the state of the injury avoid conflict with California law in a technical sense; it also accords with the basic policy of California itself in favor of allowing recovery at the place of injury; as this Court has already had occasion to note and approve in *Pacific Employers Insurance Co.* v. *Industrial Accident Commission of California*, 306 U. S. 493 (1939). In that case California made an award to an employee

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[1] "Where the conditions of compensation exist, the right to recover such compensation, pursuant to the provisions of this division is, except as provided in Section 3706 [not relevant here], the exclusive remedy against the employer for the injury or death." Deering Cal. Code Ann., Labor, Sec. 3601.

The California Code also provides, *id.*, Sec. 5305, that "the Commission has jurisdiction over all controversies arising out of injuries suffered without the territorial limits of this State in those cases where the injured employee is a resident of this State at the time of the injury and the contract of hire was made in this State." We put aside the latter section without further comment since in this case the contract of employment was not made within the State, noting only that on its face this clause does not purport to be exclusive even if the contract were made within the State.

of a Massachusetts corporation who was regularly employed in Massachusetts and was only temporarily in California on business at the time of his injury. This Court noted that while both states involved had "exclusive" laws, neither could "determine the choice of law to be applied in the other." *Id.* at 500. This Court upheld the authority of a state

> "to legislate for the bodily safety and economic protection of employees injured within it. Few matters could be deemed more appropriately the concern of the State in which the injury occurs or more completely within its power." 306 U. S. 503.

In short, this Court has on several occasions and after the fullest consideration held that, under three provisions of the Constitution, it was wholly proper for the state of injury to provide a remedy for the consequences of injury. In the various cases cited above, the matter has been emphasized in terms of medical costs, in terms of avoidance of public charges, in terms of protection of dependents. As will be developed more fully in the immediately next section of this brief, nothing in the commerce clause requires that the powers of the state of injury, upheld as to every other category of employment, should be eliminated as to transportation workers.

III. The Constitution Permits the State of Injury to Govern the Consequences of Injury—the Argument from the Commerce Clause.

One may have his doubts, as some members of this Court obviously do, whether any state regulation of commerce which is non-discriminatory should be invalid under the commerce clause; cf. *Gwin, White & Prince* v. *Henneford*, 305 U. S. 434, dissent at 442 (1939). But it is unnecessary to stir those waters of controversy in the instant case, for even under the most conventional view of the matter there is here no such burden as should be held invalid. This is "a police regulation of local aspects of interstate commerce" which "is a power often essential to a state in safeguarding vital local interests." *Freeman* v. *Hewit*, 329 U. S. 249, 253 (1946). As will be developed more fully, the only possible burden on commerce in this case is a minor expense. The only

cases in recent years in which this Court has invalidated a police-type regulation either for conflict with the commerce clause or a statute enacted thereunder has been in instances of what were felt to be severe cripplings of interstate commerce. See *Castle* v. *Hayes Freight Lines*, 348 U. S. 61 (1954) (state may not revoke operating licenses of motor carrier altogether for violation of weight requirements, but may use appropriate penalties); *Dean Milk Co.* v. *Madison*, 340 U. S. 349 (1951) (Madison milk regulations regarded by the majority as an outright discrimination against interstate commerce); *Hood* v. *Du Mond*, 336 U. S. 525 (1949) (majority view that a state might not refuse to license altogether an interstate business on the ground that its commodities were needed locally).

We remind the Court that there is in the instant case no question of duplicating the liability of a carrier. The entire burden is thought to be that of requiring added insurance by virtue of making the company subject to liability in more states than one. The states retain power, even in the area of interstate commerce, to require those things to be done which are "reasonably related to the necessity for protecting the local interests on which the power rests." *Panhandle Pipe Line Co.* v. *Public Service Comm.*, 332 U. S. 507, 523 (1947). Numerous regulations of motor carriers, each palpably more burdensome than that here involved, have been consistently upheld by this Court. The states have the power to regulate truck weights, *Morris* v. *Duby*, 274 U. S. 135 (1927); make net load requirements, *Sproles* v. *Binford*, 286 U. S. 374 (1932); restrict the width of trucks materially below the normal truck width in use throughout the country, *South Carolina State Highway Department* v. *Barnwell Bros.*, 303 U. S. 177 (1938); and restrict the practice of vehicles carrying other vehicles in forbidden manners, *Maurer* v. *Hamilton*, 309 U. S. 598 (1940). The states may also control routes, *Bradley* v. *Public Utilities Com.*, 289 U. S. 92 (1933) and advertising on vehicles, *Railway Express Agency, Inc.* v. *New York*, 336 U. S. 106 (1949).

The foregoing cases which bear very obviously on safety con-

siderations uphold the power of the states to regulate. This factor is also present in the instant case if interstate carriers are found liable under Arizona compensation standards, they may be more careful about using the type of tire which blew out and caused the death of Collins.

The state power over insurance has also been directly upheld. The power of the states to require interstate carriers to furnish adequate insurance at least for persons other than passengers was approved in *Sprout* v. *South Bend*, 277 U. S. 163, 172 (1928), followed in *Continental Baking Co.* v. *Woodring*, 286 U. S. 532 (1932); *Hicklin* v. *Coney*, 290 U. S. 169 (1933). It may be that those decisions have been swept into the discard by the portions of the Motor Carrier Act in 1935 discussed in the first section of this brief which do govern certain types of insurance other than workmen's compensation. The point remains that, in the absence of statute, the right to make reasonable insurance requirements has been upheld in the states so long as there is no conflict with a federal statute; and in the instant case there is no such conflict.

While the exact question of workmen's compensation has not been considered in this Court, it has been touched upon in state decisions. For collected cases, see 138 A.L.R. 956 and 148 A.L.R. 873. We find only one case asserting that it is an unconstitutional burden on commerce for a state to give compensation to an interstate driver injured within its borders; see *Spohn* v. *Industrial Commission*, 133 Ohio St. 42, 32 N.E. (2d) 554 (1941). The accident in this case considerably antedated the decision of the United States Supreme Court in *Pacific Employers Insurance Company* v. *Industrial Accident Commission*, *supra* (1939), which gave a substantial new bent to the law of interstate relations in favor of allowing compensation by the state of the injury, and this case was apparently not called to the attention of the Ohio Supreme Court in *Spohn*, which did not mention it. Subsequent Ohio decisions have very nearly limited the *Spohn* case to its facts, *Holly* v. *Industrial Commission*, 142 Ohio St. 79, 50 N.E. (2d) 152, 156 (1943), restricting the *Spohn* case to situations in which the employer does no intrastate business whatsoever. See in that

same spirit of avoidance of the *Spohn* rule, an earlier case, *Hall v. Industrial Commission*, 131 Ohio St. 416, 3 N.E. (2d) 367 (1936). We particularly emphasize this distinction in Ohio because the Court below followed it, see particularly Appendix, p. 20; in short, the Arizona understanding is that application of a state workmen's compensation law to an interstate motor carrier is invalid because of added insurance premiums which will have to be paid therefor if, and only if, the employer is engaged *exclusively* in interstate commerce. In petitioners' view, the burden is no greater in the one case than in the other; the burden on interstate commerce is the same either way.

The New York cases have not had the reservations of Ohio, New York having taken the view that in the absence of federal regulation the state workmen's compensation laws are applicable. See *Etters v. Trailways of New England, Inc.*, 266 App. Div. 929, 43 N.Y.S.2d 884 (1943), *Anslow v. Spring*, 272 App. Div. 1091, 74 N.Y.S.2d 782 (1947). See for a similar view *Buckingham Transp. Co. v. Industrial Commission*, 93 Utah 342, 72 P. (2d) 1077 (1937). See also the application of the same view to airlines, *Spelar v. American Overseas Airlines, Inc.*, 80 Fed. Supp. 344, 347 (S.D., N.Y., 1947), disposed of on unrelated grounds here, 338 U.S. 217 (1949).

The Court below was led to its result here by its interpretation of *Southern Pacific Co. v. Arizona*, 325 U.S. 761 (1945), a case in which it had previously been reversed for upholding the Arizona train limitation law over commerce clause objections. We believe that case to be distinguishable both on its facts and on its theory. As for its facts, the Court found there what it regarded as a very severe burden on interstate commerce, materially and adversely affecting the flow of transportation from El Paso to Los Angeles; it found no perceptible benefit in the legislation, concluding that it probably hindered safety as much as it helped it; and it reached this conclusion on a record which documented just what the burdens and the benefits were supposed to be. In the instant case there is no record showing any burden, which is at most slight, and no one supposes that compensation is in any way

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injurious to road safety; on the contrary, it probably increases it. Finally, the Court in *Southern Pacific* specifically reserved what it regarded as the superior jurisdiction of states over their highways, as apart from railroads, distinguishing *South Carolina State Highway Department v. Barnwell Bros., supra*, solely on this ground. See 325 U.S. at 783, emphasizing "that there are few subjects of state regulation affecting interstate commerce which are so peculiarly of local concern as is the use of the state's highways."

Not only is there an absence of anything in the record which would show the existence of a burden—and the *Southern Pacific* case reminds that state regulations of commerce "will not be invalidated without the support of relevant factual material which will 'afford a sure basis' for an informed judgment," 325 U.S. at 770—but, on the face of it, it is hard even to imagine a substantial burden on interstate commerce. As the Court said in the *Southern Pacific* case, the question is "whether the relative weights of the state and national interests involved are such as to make inapplicable the rule, generally observed, that the free flow of interstate commerce and its freedom from local restraints in matters requiring uniformity of regulation are interests safeguarded by the commerce clause from state interference." *Id.*, 770, 771. In the instant case, the burden consists solely and exclusively of paying extra insurance premiums, while the benefit to the state is that whole group of values which have already been held sufficient to uphold state regulation under the due process, full faith and credit, and contract clauses. The employer would not even have to take out two policies; Arizona law authorizes it, if it wishes, to take out a policy with any of the recognized insurance carriers, 23-961, R.S.A., though some increase of premium results.

The burden thus comes to the cost of insurance premiums. We know of no case in which a police power regulation doing much good to the state, involving no inconvenience to commerce of any kind, and taking only a small sum of money for compliance has been held invalid, at least in the absence of discrimination. As the factual analysis at the beginning of this brief

and in Appendix A shows, if the practice of requiring compensation in the state of injury were to become universal, the cost would be very nearly *de minimis*. We do not suggest that a regulation is automatically valid because it is small. We do assert that when the burden on commerce is weighed against the benefit to the state, this burden is minuscule, and the benefit very great. It is one of the common facts of life that any carrier as well as any employer operating in more states than one must carry insurance adequate to meet the highest liability of any of those states as well as the lowest. Indeed, until recent amendments to the Federal Employers Liability Act somewhat limited the practice, that statute almost put a premium on forcing employee accident cases into the state of highest compensation, carrying the insurance rates along with it. See *Ex Parte Collett*, 337 U.S. 55 (1949). If the respondent company wished to do business in more states than California there is no more reason to construe the Constitution of the United States to limit his insurance charges to those which may be required for California liability than to limit his obligations as to bus weight, load, speed, license fees, proper taxes, and all the other impositions which the state of operation may assert.

CONCLUSION

It is settled by the decisions of this Court that the workmen's compensation law of the state of injury may, if that state wishes, apply to all employees not engaged in interstate commerce. It is held by the state courts which have considered the issue, and is conceded by the Court below, that the same rule should apply to motor carriers engaged in *both* interstate and intrastate commerce. The jurisdiction of the state of injury thus may extend, so far as the Federal Constitution is concerned, to what must be well over 99% of the employees of the country.

There is no ground for excepting from this benign general rule the comparative handfull of employees whose employers are engaged exclusively in interstate commerce. The Court below, accepting the generous compensation policy of its state, was clearly most reluctant to reach the harsh result it felt compelled to estab-

lish by its understanding of this Court's decision in *Southern Pacific Co. v. Arizona, supra*. It should be relieved of that compulsion.

Respectfully submitted,

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APPENDIX A

SELECTED STATISTICS ON PROPORTION OF WORKMEN'S COMPENSATION EXPENSE TO OTHER EXPENSES OF MOTOR CARRIERS

The following figures, except the percentages, are taken from *Statistics of Class I Motor Carriers for the Year Ended December 31, 1953*, published by Bureau of Transport Economics and Statistics, Interstate Commerce Commission, July, 1955.

I. **Operation and Maintenance Expenses, Common Carriers of General Freight, Owned Equipment, 536 Carriers. P. 15.**

Equipment Maintenance		$119,914,002
Transportation		353,319,519
Terminal		158,597,846
Traffic		30,181,845
Insurance and Safety		
Supervision	4,068,600	
Office and other expenses	1,304,967	
Public liability and property damage	15,302,919	
Workmen's compensation	6,522,967	
Cargo loss and damage	15,342,837	
Fire, theft and collision	3,619,958	
Other insurance expense	751,662	
Other insurance and safety department expenses	193,069	
Operating rents	56,946	
Total Insurance and Safety		47,163,925
Administrative and General		73,636,654
Grand Total		$782,813,761
% of Workmen's Compensation to Total		0.833276%

II. **Same, owned and Leased Equipment or purchased transportation, 564 Carriers. P. 27.**

Equipment Maintenance	$139,665,772
Transportation	729,545,496
Terminal	203,602,211

Traffic		45,577,866
Insurance and Safety		
Supervision	6,305,437	
Office and other expenses	2,037,612	
Public liability and property damage	30,118,500	
Workmen's compensation	8,556,630	
Cargo loss and damage	23,909,522	
Fire, theft and collision	4,598,269	
Other insurance expense	891,514	
Other insurance and safety department expenses	193,060	
Operating rents	71,699	
Total Insurance and Safety		76,682,243
Administrative and General		97,742,669
Grand Total		$1,292,816,257
% of Workmen's Compensation to Total		0.66186%

III. **Operation and Maintenance Expense, Carriers of Passengers in Intercity Service, 161 Carriers. P. 61.**

Equipment Maintenance and Garage Expense		$ 68,717,146
Transportation Expense		124,516,311
Station Expense		43,696,079
Traffic, Soliciation, and Advertising Expense		14,063,805
Insurance and Safety Expense		
Salaries and expenses—Insurance and safety	1,847,063	
Public liability and property damage insurance	5,326,874	
Injuries and damages	5,186,772	
Workmen's Compensation—Insurance	817,856	
Workmen's compensation—Self-insurer	160,825	
Baggage and express insurance	3,532	
Baggage and express loss and damage	162,197	
Fire and theft insurance	704,097	

Other insurance	411,426	
Total insurance and safety		14,620,642
Administrative and General Expense		27,436,646
Grand Total		$293,050,629
% of Workmen's Compensation to Total		0.33396%

IV. Operation and Maintenance Expenses, 63 Carriers Engaged in Local or Suburban Service, P. 70.

Equipment Maintenance and Garage Expense		$22,802,688
Transportation Expense		60,175,790
Station Expense		1,642,303
Traffic, Solicitation, and Advertising Expense		1,320,741
Insurance and Safety Expense		
Salaries and expenses—		
Insurance and safety	1,038,618	
Public liability and property damage insurance	2,242,257	
Injuries and damages	1,906,125	
Workmen's compensation Insurance	177,205	
Workmen's compensation— Self insurer	123,756	
Baggage and express insurance	547	
Baggage and express loss and damage	1,388	
Fire and theft insurance	223,540	
Other insurance	59,880	
Total insurance and safety		5,773,316
Administrative and General Expense		9,467,047
Grand Total		$101,181,885
% of Workmen's Compensation to Total		0.29745%

V. Aggregate Comparison of Above Tables.

Total Expenses, Group I, *supra*	$782,813,761
Workmen's Compensation, Group I, *supra*	6,522,967

Total Expenses, Group II, *supra*	1,292,816,257
Workmen's Compensation, Group II, *supra*	8,556,630
Total Expenses, Group III, *supra*	293,050,629
Workmen's Compensation, Group III, *supra*	978,681
Total Expenses, Group IV, *supra*	191,181,885
Workmen's Compensation, Group IV, *supra*	300,961
Total Expenses, all four groups	$2,469,862,532
Total Workmen's Compensation, all four groups	$16,359,239
% of Workmen's Compensation cost to all costs, on all carriers classified	0.66235%

the bottom of paragraph 2, page 17. The option given in the statute would be completely nullified by requiring the employer to carry his insurance with a private carrier rather than the state fund. The end result sought by petitioners would require new legislation in Arizona. It cannot be reached under existing statutes. The same reasoning prevents an application of petitioners' theory when we consider the basis for compensation benefits. This matter was thoroughly considered and discussed in the opinion below (Record Appendix page 22). To permit the end result sought by petitioners here likewise would necessitate additional Arizona legislation. The existing statute does not permit such a result.

Returning again to the opinion below, we refer to the following language appearing on page 21 of the Record Appendix:

> "* * * We do not decline jurisdiction merely for the reason that decedent was engaged in interstate commerce, but in view of an additional consideration — that he was also covered in another jurisdiction * * *."

Obviously the Court was considering all of the facets of the Arizona Act when it made the above statement, and we have a clear indication that interstate commerce itself and the federal commerce clause need not necessarily be the controlling factor.

The Court below has placed no burden of any nature upon the federal authority. True, it has cited the commerce clause as a reason for its holding. Analysis of the opinion, however, clearly indicates reasons for

APPENDIX B

EXTRACT FROM LETTER FROM INTERSTATE COMMERCE COMMISSION CONCERNING COMMISSION JURISDICTION OVER COMPENSATION INSURANCE OF MOTOR CARRIERS

INTERSTATE COMMERCE COMMISSION
Bureau of Motor Carriers
Washington 25

February 1, 1956
Refer to K-GCW

Mr. John P. Frank
Lewis, Roca, Scoville & Beauchamp
919 Title & Trust Building
Phoenix, Arizona

Gentlemen:

This will acknowledge your letter of January 20 concerning the question of workmen's compensation insurance as it affects interstate motor carriers. It is quite clear to us that this Commission takes no jurisdiction of workmen's compensation insurance for interstate motor carriers with the exception that the motor carrier applying to this Commission for permission to self-insure either bodily injury and property damage liability or cargo liability must indicate what disposition is made of his employer's liability obligation. However, the reason for inquiring in these instances is to assure sound financial conditions for the authorization for the type of self-insurance for which application is being made.

To our knowledge there is no publication of this Commission which will bear on this question, with the possible exception of BMC Form 90 which is the endorsement form prescribed by this Commission for attachment to motor carrier policies of insurance for automobile bodily injury and property damage liability. This form says in part, "excluding injury to or death of the insured's employees while engaged in the course of their employment." Copy of this form is enclosed herewith. . . .*

Very truly yours,
/s/ W. Y. Blanning
W. Y. Blanning, Director

*One paragraph relating to a different subject has been deleted. The original of the entire letter has been placed on file with the Clerk of this Court.

No. 523

In the Supreme Court of the United States

OCTOBER TERM 1955

JOAN GREENWAY COLLINS, WIDOW, AND CARROLL LEE COLLINS, MINOR CHILD OF ADOLFUS HENRY COLLINS, DECEASED, PETITIONERS,

vs.

AMERICAN BUSLINES, INC., RESPONDENT EMPLOYER, THE INDUSTRIAL COMMISSION OF ARIZONA, RESPONDENT INSURANCE CARRIER.

BRIEF OF RESPONDENT THE INDUSTRIAL COMMISSION OF ARIZONA

JOHN R. FRANKS
Arizona State Office Bldg.
1640 W. Adams Street
Phoenix, Arizona
Attorney for Respondent,
The Industrial Commission of
Arizona

APPENDIX

Sec. 23-902. Employers subject to chapter

A. Employers subject to the provisions of this chapter are the state, each county, city, town, municipal corporation, school district and every person who has in his employ three or more workmen or operatives regularly employed in the same business or establishment under contract of hire, except agricultural workers not employed in the use of machinery and domestic servants. Exempted employers of agricultural workers or domestic servants or employers of less than three workmen or operatives may come under the provisions of this chapter by complying with its provisions and the rules and regulations of the commission. For the purposes of this section "regularly employed" includes all employments, whether continuous throughout the year, or for only a portion of the year, in the usual trade, business, profession or occupation of an employer.

B. When an employer procures work to be done for him by a contractor over whose work he retains supervision or control, and such work is a part or process in the trade or business of the employer, then such contractors and the persons employed by him, and his sub-contractor and persons employed by the sub-contractor are, within the meaning of this section, employees of the original employer.

C. A person engaged in work for another, and who while so engaged is independent of the employer in the execution of the work and not subject to the rule or control of the person for whom the work is done, but is engaged only in the performance of a definite job or piece

In the Supreme Court of the United States

JOAN GREENWAY COLLINS, WIDOW, AND CARROLL LEE COLLINS, MINOR CHILD OF ADOLFUS HENRY COLLINS, DECEASED, PETITIONERS,

vs.

AMERICAN BUSLINES, INC., RESPONDENT EMPLOYER, THE INDUSTRIAL COMMISSION OF ARIZONA, RESPONDENT INSURANCE CARRIER.

BRIEF OF RESPONDENT THE INDUSTRIAL COMMISSION OF ARIZONA

PREFACE

Relative to the opinion below, and the jurisdiction being invoked, we adopt petitioners' appendix reference. As observed by petitioners in opening brief, the record in this matter appears in printed form in the appendix to petitioners' petition for certiorari. For the sake of clarity, and in order to avoid confusion with the appendix affixed herein to respondent's brief, we will refer to the appendix to the petition for certiorari as the Record Appendix, and the appendix herein will be referred to as Respondent's Appendix.

Once again we deem it necessary to re-phrase the question presented as follows:

"Whether the workmen's compensation law of the state of the injury *must* be applied to a motor carrier operator in interstate commerce where the claimant is domiciled in, has contracted his hire in, and is fully covered by the compensation laws of, another state."

We re-phrase the question in the above manner due to the unusual nature of the situation presented by this appeal, bearing in mind that we do not have before us a situation where the state has attempted *to place* a burden on interstate commerce, but, on the contrary, has attempted to avoid such a burden in construing its own state statutes and laws relative to the field under consideration.

It is conceded that the federal commerce clause has been discussed and used in the opinion below and that insofar as federal legislation is concerned, the federal commerce clause is the only item under consideration. Regarding the statutes of the State of Arizona, however, we would make reference to several provisions in addition to Section 23-902 (a), Arizona Revised Statutes 1956, referred to in petitioners' opening brief. These provisions including Section 23-902 in its entirety are set forth in Respondent's Appendix as Sections 23-903, 23-904, 23-961, 23-983, 23-1001, 23-1002 and 23-1003, Arizona Revised Statutes 1956.[1]

STATEMENT

Petitioners have given a statement of facts which is essentially correct with the exception of a few minor details which are strictly *dehors* the record. As to

[1]Subsequent to the decision below, the legislature of the State of Arizona adopted a code revision, and the citations herein given are to the 1956 revision, properly referred to as Arizona Revised Statutes. The revision did not effect any substantive change in existing law.

treatment of the subject matter by the Court below, it should be observed that by its decision the Arizona Court actually affirmed the basic principle of its prior decision in *Industrial Commission v. Watson Brothers Transportation Co., Inc.*, 75 Ariz. 357, 256 Pac. 2d 730 (1953). This principle involved a construction of the Arizona statutes relating to workmen's compensation and the fiscal aspects of workmen's compensation insurance in Arizona in a manner so as to preclude the application of double premium requirements. Obviously the Court, in its immediate opinion below, considered its repudiation of a portion of the *Watson Brothers* opinion to be one of minor importance in its relation to the major basis for that decision. (Record Appendix, page 18. We emphasize the fact that the matter now before us is of more far reaching effect than the immediate result of the instant case. The history of the controversy antedates the litigation in *Watson Brothers*, supra, and in fairness to the respondent commission herein, the decision in the *Watson Brothers* case must be considered along with the opinion below in the instant case.[1]

Petitioners have seen fit to place in their brief a discussion of what they choose to call general industrial facts and the two divisions of the brief appendix are concerned with similar material. We respectfully submit that this discussion, and the appendix material, is entirely extraneous, it not having been presented to the lower court in any phase, and further, the references are to fragmentary statistical material only in a broad

[1]Subsequent to the decision in the *Watson Brothers* case in 1953, the Industrial Commission of Arizona was obliged to alter by endorsement in excess of 100 of its regularly issued policies affecting employers who were operating into the state and across the state.

field where the peculiar nature of the Arizona Workmen's Compensation Act in its relation to other states is completely ignored.[1] We do not concede that the issue herein presented can be determined on the basis of motor carriers' costs for workmen's compensation and their relation to over-all costs, even though the record herein could be made complete with proper statistical material covering the Arizona situation in its relation to commerce between the various states. We do not as yet have a universal application of identical compensation acts in all of the states of the Union, and we submit that only under such a situation could consideration be given to the statistical material submitted by petitioners. Obviously, under the situation as it exists, with varying types of compensation acts in effect in the various states, we must look to the state under consideration in each instance.

SUMMARY OF ARGUMENT

Respondent will advance argument along three general lines. First, we continue to urge that the proceedings do not present a federal question properly subject to review here. We reason that the Court below dealt primarily with the construction of Arizona statutes and an over-all construction of the Arizona Workmen's Compensation Act in its relation to those employers who must concern themselves with the laws of various states in the operation of their business. We reason that there is a sound basis for the ultimate de-

[1] The Arizona Workmen's Compensation Act is unique among the various state acts in that it is the only Act of unlimited benefits. Death benefit awards to dependents, and life time awards to injured workmen, are very often in amounts many times the amount of benefits that would be available under similar circumstances in other states. From an underwriting standpoint, and from an actuarial standpoint, it naturally follows that the premium rate structure of the state fund must be gauged accordingly.

cision of the Court below existing by virtue of the statutes embodying the Arizona Act wholly aside from any consideration of the federal commerce clause. And we further assert that this basis is apparent from a careful analysis of the two Arizona cases, *Industrial Commission v. Watson Brothers Transportation Co., Inc.*, supra, and the instant *Collins* case. Secondly, we are not inclined to treat summarily the observations of the Arizona Court in the opinion below regarding the effect of the Arizona statutes and their relation to the federal commerce clause. We read in the opinion below a clear understanding of the problem facing carriers in interstate commerce as analyzed in the case of *Spohn v. Industrial Commission*, 133 Ohio St. 42, 32 N.E. 2d 554 (1941), and we feel that if the Arizona Court considers its Workmen's Compensation Act to be an undue burden in certain phases and in certain instances upon carriers engaged in interstate commerce, it should be privileged to analyze the situation and interpret the law to a finality. Thirdly, we feel that if any doubt exists concerning the degree of compulsion that the Court below felt in adhering to the federal commerce clause exception, clarification from the lower Court should be sought before final determination by this Court. We will avow that the subject matter of this litigation is of vital concern to the Respondent Industrial Commission of Arizona. This is the agency that has the problem of administering the Arizona Workmen's Compensation Act, not only from a claimant's standpoint, but from the underwriter's standpoint, and the wage problems and premium problems emphasized by the author of the opinion below (Record Appendix, page 22) will be of great importance to this agency.

ARGUMENT

1. Opinion below is justified under construction of state statutes alone.

The following language appears in the opinion below (Record Appendix, page 16):

> "* * * We hesitate to construe our workmen's compensation laws in a manner as to exclude employees injured in Arizona unless such construction is clearly required *by the terms of the statute.*" (Emphasis supplied.)

Clearly the Arizona Court had in mind its Arizona statutes, and in particular Sections 23-903, 23-904, 23-961, 23-983, 23-1001, 23-1002 and 23-1003 which appear in the appendix to this brief. Section 23-904 clearly contemplates that workmen hired outside of the State of Arizona might be injured while engaged in their employers' business in Arizona, and consequently, provision is made for the enforcement of rights against the employer in the Arizona forum. The statute recognizes that in instances of that nature coverage under the Arizona Act might not be applicable. Under Section 23-903, the Arizona Act has recognized employment in interstate commerce and makes the Arizona Act applicable in limited instances. Specific attention is directed to the provisions of Section 23-961 wherein the employer is given optional methods of securing compensation coverage. No provision is made for splitting coverage between two or more of the optional methods given. We deem this to be of importance because it completely negatives the possibility of *requiring* the employer to insure under one particular method as suggested by petitioners in their opening brief at

the holding existing solely in Arizona statutes in addition to reasons from the commerce clause standpoint. We feel that this Court should not concern itself further with the subject matter presented.

2 Observations in the opinion below concerning the federal commerce clause are sound.

We cannot concede that the Court below, in its reluctance to exact the double payment of premium from carriers, was concerned with the cost item alone, as petitioners would lead us to believe. Procedure and detail are involved as well as cost, even though the ultimate result may be termed a premium requirement. The Industrial Commission of Arizona does not concern itself with regulation of the state highways. The Commission administers an insurance plan available to all employers regardless of incidental use of the highways. Regulation of the state highways is reserved to other state agencies. We cannot discard the theory of *Southern Pacific Co. v. Arizona*, 325 U.S. 761 (1945), by comparing regulations of the railroads with regulation of the highways and then proceed to find a different situation existing in the latter. The free flow of interstate commerce could be affected procedurally by the Arizona Workmen's Compensation Act aside from the cost item and aside from state highway regulation, and thus, to the extent that this Court concerned itself with the free flow of interstate commerce in the *Southern Pacific* case, like concern should exist in the instant case. The principle followed in *Spohn v. Industrial Commission*, supra, by the Ohio Court was carefully observed by the Arizona Court in the earlier decision of *Industrial Commission v. Watson Brothers Transpor-*

tation Co., supra, and the opinion below in the instant *Collins* case indicates a following of the same principle. Regardless of considerations of the Courts of New York, and other jurisdictions, so heavily emphasized by petitioners in their opening brief, we have failed to find a direct repudiation of the *Spohn* case theory, and we have failed to find a prohibition against its use by the Arizona Court in the field of workmen's compensation. Certainly the Arizona Court can best judge the effects and ramifications of its own state workmen's compensation plan, and it should have the liberty to declare its position in relation to interstate commerce procedurally as well as cost wise. We feel that petitioners have unduly limited the basic theory of the *Southern Pacific* case, supra, by seeking to compare regulation of the railroads with regulation of the state highways, the latter being of no direct concern in the instant consideration.

3. If doubt exists regarding the extent and effect of state statutes in arriving at the opinion below, clarification should be sought from the Court below before any far reaching decision herein.

We have attempted to emphasize the importance of the instant litigation to the State of Arizona in the operation of its workmen's compensation plan through its agency, the Industrial Commission of Arizona, and we have attempted to point out that the Court below is best able to judge the extent of permitted coverage under the Arizona Workmen's Compensation Act. We insist that the opinion below indicates compelling reasons for the decision existing solely within the state statutes in addition to well-founded concern over the

problems of employers operating in and between the various states. It would seem reasonable to further ascertain the views of the Arizona Court before a decision might be reached which would compel the Arizona jurisdiction to surrender vital state fund safeguards, and require the Arizona jurisdiction to amend its laws.

CONCLUSION

Affirmance of the Court below in its position should be given either at this time, or after further clarification.

Respectfully submitted:

JOHN R. FRANKS
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Phoenix, Arizona
Attorney for Respondent,
The Industrial Commission of
Arizona

March 1956.

of work, and is subordinate to the employer only in effecting a result in accordance with the employer's design, is an independent contractor, and an employer within the meaning of this section.

Sec. 23-903. Application of chapter to persons engaged in interstate commerce; limitation

The provisions of this chapter shall apply to employers and their employees engaged in intrastate and also in interstate and foreign commerce for whom a rule of liability or method of compensation has been or may be established by the United States only to the extent that their mutual connection with intrastate work is clearly separate and distinguishable from interstate or foreign commerce.

Sec. 23-904. Effect of injury without the state; right to compensation of out-of-state employee injured within state

A. If a workman who has been hired or is regularly employed in this state receives a personal injury by accident arising out of and in the course of such employment, he shall be entitled to compensation according to the law of this state even though the injury was received without the state.

B. If a workman who has been hired without this state is injured while engaged in his employer's business, and is entitled to compensation for the injury under the law of the state where he was hired, he may enforce against his employer his rights in this state if they are such that they can reasonably be determined and dealt with by the commission and the courts in this state.

Sec. 23-961. Methods of securing compensation by employers; regulation of compensation insurance carriers

A. Employers, but not including the state or its legal subdivisions, shall secure compensation to their employees in one of the following ways:

1. By insuring and keeping insured the payment of such compensation with the state compensation fund.

2. By insuring and keeping insured the payment of such compensation with a corporation or association authorized to transact the business of workmen's compensation insurance in the state, and filing with the commission, on a form prescribed by it, notice of the employer's insurance, together with a copy of the contract or policy of insurance. The corporation or association shall write and carry all risks or insurance for which application may be made to it which are not prohibited by law, and shall carry a risk to the conclusion of the policy period unless cancellation is agreed to by the commission and the employer. Any policy shall be subject to cancellation at any time by the commission.

3. By furnishing to the commission satisfactory proof of financial ability to pay direct the compensation in the amount and manner and when due as provided in this section. The commission may require a deposit or other security from the employer for the payment of compensation liabilities in an amount fixed by the commission, but not less than one hundred thousand dollars. The employer shall pay a tax of two per cent of the premiums which would be paid by the employer if insured in the state fund. The tax shall not be less than two hundred fifty dollars per annum to be computed and collected by the commission and paid into

the expense reserve of the compensation fund. If the employer does not fully comply with the provisions of this section relating to the payment of compensation, the claims for compensation shall be deemed assigned to the commission for the benefit of the state compensation fund, and the commission shall pay the compensation, benefits or amounts as may be due under the provisions of this chapter. The commission shall then have a claim against the employer and upon his bond, if any, for the amount so paid to be recovered by the commission together with necessary expenses and a reasonable attorney's fee to be fixed by the court, and the commission may revoke the authority of the employer to pay compensation direct.

B. Corporations or associations transacting the business of workmen's compensation insurance in the state shall be subject to the rules and regulations of the commission, including rates to be charged, policy forms to be used and the method of paying compensation. Only corporations having a paid-up capital stock of five hundred thousand dollars and surplus of one hundred thousand dollars, or an aggregate capital and surplus of six hundred thousand dollars, or mutual associations having net assets over and above all liability of six hundred thousand dollars, shall be permitted to transact such business, and their liability shall include a reinsurance reserve which shall equal sixty-five per cent of the gross annual premiums or deposits received by the corporation or association on account of workmen's compensation insurance, and fifty per cent of the gross annual premiums on all other lines of insurance and a pro rata amount of gross premiums collected for more than one year.

C. Before transacting such business, the corporation or association shall deposit with the commission cash or securities in an amount equal to seventy-six per cent of the sixty-five per cent of the gross annual premiums of deposits received by the corporation or association on account of workmen's compensation insurance collected by it in the state, such securities to be at all times subject to approval of the commission. In lieu of cash or securities the corporation or association may, with approval of the commission, furnish bond of a corporate surety company authorized to transact business in the state. The bond or securities shall be held by the commission as security for fulfillment of the obligations of the corporation or association under this chapter.

D. Such an insurance carrier authorized to do business in the state shall make and file with the commission annually, on or before March 1 of each year, a statement, under oath, giving a true account of the company during the year ending December 31 next preceding. The form shall be prescribed by the commission in such manner as appears to the commission best adapted to elicit from such corporation a true statement of its financial condition. The statement shall contain:

1. The total amount of all premiums collected under workmen's compensation insurance policies or contracted for by the insurance carrier making the statement during the year.

2. The total amount actually paid for losses.

3. The total reserves for losses incurred.

4. The total amount paid policy holders on return premiums for the same period.

5. The amount of workmen's compensation insurance written in this state and reinsured in other companies not admitted, and similarly the amount reinsured in admitted companies, and the amount of such reinsurance accepted from admitted companies.

6. The premiums received for such reinsurance.

7. The names of the companies so reinsured.

E. The insurance carrier shall pay to the state treasurer for the credit of the expense reserve of the state fund, in lieu of all other taxes on workmen's compensation insurance, a tax of two per cent on all premiums collected or contracted for during the year ending December 31 next preceding, less deductions from such premiums, amounts paid to policy holders as return premiums and the amount paid as premiums to admitted companies for reinsurance on workmen's compensation insurance in this state.

Sec. 23-983. Determination of rates, surplus and reserves

A. The state compensation fund shall be neither more nor less than self-supporting.

B. Employments affected by the provisions of this chapter shall be divided by the commission for the purpose of the state compensation fund into classes whose rates may be readjusted at times the commission determines. The commission may rearrange the classes by withdrawing any employment embraced in one class

and transferring it wholly or in part to another class. Separate accounts shall be kept of the amounts collected and expended in each class for rate determination purposes, but for the payment of compensation and dividends the fund shall be one and indivisible.

C. The commission shall determine the hazards of the different classes of occupations or industries, fix the premiums therefor at the lowest rate consistent with the maintenance of a solvent compensation fund and the creation of a surplus and reserves, and may adopt a system of schedule rating in a manner to take account of the peculiar hazard of each individual risk.

D. The commission, in fixing rates, shall provide for expenses of administering the fund, disbursements on accounts of injuries and deaths of employees in each class, an adequate catastrophe reserve, reserves adequate for anticipated and unexpected losses, reserves adequate to carry the class to maturity and other necessary reserves and surplus determined by the commission. The amount of surplus and reserves shall be determined by the commission, but the catastrophe reserve shall not be less than one hundred thousand dollars.

E. The commission may in its discretion endorse on any of its regularly issued policies a self-rating plan, and may apply tentative rates, subject to modification in accordance with the loss experience of such risks, and shall provide for a carrying charge, premium tax and a rate for creation of a catastrophe reserve and reserves to be fixed by the commission for the purpose of meeting anticipated and unexpected losses.

Sec. 23-1001. Delivery of insurance contract or policy to employer

Every employer insuring in the state compensation fund shall receive from the commission a contract or policy of insurance in a form approved by the commission.

Sec. 23-1002. Payment of premium; transmittal to treasurer

A. Except as otherwise provided, every employer, except the state, who has insured in the state compensation fund shall semi-annually pay into the state compensation fund the amount of premium determined and fixed by the commissioner for the employment or occupation of such employer. A receipt or certificate, under the seal of the commission, certifying that payment has been made shall immediately be mailed to the employer by the commission.

B. All premiums received by the commission shall be paid over to the state treasurer to the credit of the compensation fund.

C. If an employer fails to pay the premium to the state compensation fund or to an insurance company authorized to do business in this state when the premium becomes due, and action is instituted to recover the premium, the prevailing party shall be entitled to a reasonable attorney's fee to be fixed by the court.

Sec. 23-1003. Semi-annual adjustment of premiums

If the amount of premiums collected from an employer at the beginning of a period of six months is based on the estimated expenditure of wages for the

ensuing six-month period, an adjustment of the premium shall be made at the end of such period, and the actual amount of the premium determined in accordance with the amount of the actual expenditure of wages for such period. If the wage expenditure for the six-month period was less than the amount estimated, the employer shall receive a refund from the fund of the difference between the amount paid by him and the amount found due, or shall have the difference credited on succeeding payments, at his option. If the premium exceeds the amount paid at the beginning of the six-month period, the employer shall upon demand pay to the commission the difference.

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49 U.S.C. Sec. 315 9
49 C.F.R. Sec. 174, et seq. 9
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Arizona Workmen's Compensation Act, Sec. 23-902A, Revised Statutes Arizona 2
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Other Materials:

138 A.L.R. 956; 148 A.L.R. 873 (Notes on Commerce Clause and Motor Carrier Compensation) 15
Bureau of Transport Economics and Statistics of the Interstate Commerce Commission, *Statistics of Class I Motor Carriers for the Year Ended December 31, 1953* 1

In the Supreme Court of the United States

JOAN GREENWAY COLLINS, WIDOW, AND CARROLL LEE COLLINS, MINOR CHILD OF ADOLPHUS HENRY COLLINS, DECEASED, PETITIONERS,

vs.

AMERICAN BUSLINES, INC., RESPONDENT EMPLOYER,
THE INDUSTRIAL COMMISSION OF ARIZONA, RESPONDENT INSURANCE CARRIER.

BRIEF OF PETITIONERS

OPINION BELOW

The opinion below is reported at 286 P. (2d) 214. By stipulation as approved by the Clerk of this Court, the appendix to the petition for certiorari is being used in lieu of a further printed record, and the opinion below appears at what will hereafter be referred to as Appendix pp. 13 to 38.

JURISDICTION

The judgment of the Court below was entered June 28, 1955, Appendix, p. 13. Rehearing was denied October 4, 1955, Appendix, p. 39. This petition was filed in November, 1955, and certiorari was granted on January 9, 1956. Jurisdiction of this Court was invoked under 28 U.S.C. Sec. 1257(3).

QUESTION PRESENTED

Whether a state workmen's compensation law may be applied by the state of injury to a motor carrier operator engaged exclusively in interstate commerce where (a) the operator lives in, (b) made his contract of employment in, and (c) is covered by the workmen's compensation act of another state?

STATUTE AND CONSTITUTIONAL PROVISION INVOLVED

In addition to the federal commerce clause, the applicable provision of law is the Arizona Workmen's Compensation Act, sec. 23-902A, Revised Statutes of Arizona:[1]

> "Employers subject to the provisions of this chapter are . . . every person who has in his employ three or more workmen or operatives regularly employed. . . . For the purposes of this section 'regularly employed' includes all employments, whether continuous throughout the year, or for only a portion of the year, in the usual trade, business, profession, or occupation of an employer."

STATEMENT

I. Facts of This Case

This is an industrial compensation claim by the widow and child of Adolphus Henry Collins. The bulk of the facts concerning the case may be found in the Appendix to the Petition for Certiorari and, as noted above, will be so cited. A few are taken from the unprinted verified statement of facts as contained in the record certified by the Court below. It is believed that all facts are uncontroverted.

Collins was born in 1905 at El Paso, Texas, and died near Ehrenburg, Arizona, in 1953. (Verified Statement, p. 1.) He was employed at El Paso as a bus driver by defendant company, a Nebraska corporation, and in 1951 he moved to Arizona, where he drove for the same employer between Tucson and Phoenix. (*Id.*, 2, 3.) In 1952 he transferred to Los Angeles, California, driving the Phoenix-Los Angeles run. He settled his family in a trailer in Los Angeles, retaining a Phoenix mail address. (*Id.*, 3.) Though outside the record, the Court may permit us to assert that Mrs. Collins, who met the deceased in

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[1] Subsequent to the decision below and the filing of the petition in this case, Arizona adopted a code revision, and the language as given above is from the present statute. Aside from purely formal changes, there is no difference between the present and former provision.

Phoenix, has taken her child back to that place to live with her family.

The Court below found that the company was engaged exclusively in interstate commerce (Appendix 14), and that Collins spent approximately 40% of his working time on the Arizona side of the California border (Appendix 17). He was killed as the result of the blow-out of a re-tread tire (Verified Statement, p. 4).

Petitioners applied to the Industrial Commission of Arizona for compensation. That body found that Collins died on September 30, 1953, as a result of an accident in Arizona; that he was employed by defendant company; that he maintained a legal residence in California; that he was covered by California workmen's compensation; and that he left a widow and infant only six weeks old at the time of the accident. (Appendix 12, 13)

The Industrial Commission concluded that it was without jurisdiction under the decision of the Arizona Supreme Court in *Industrial Commission v. Watson Bros. Transp. Co., Inc.*, 75 Ariz. 357, 256 P. (2d) 730 (1953) (Appendix, p. 12). It construed that case as excluding from coverage under the Act, as a matter of Arizona statutory interpretation, any person who made his contract of employment outside the state and performed work elsewhere, whether engaged exclusively in interstate commerce or not. (Appendix 15)

The Arizona Supreme Court, on review duly sought, "repudiated" the *Watson Bros.* case as so interpreted (Appendix 18), holding that neither the place of contract nor the place of performance nor the combination of the two limited the coverage of the Arizona statute. It held, however, that the federal commerce clause precluded the application of the statute to purely interstate transportation; in substance, it interpreted the statute as applicable, but held it unconstitutional in that application and therefore did not apply it.*

* One member of the Arizona Court concurred on purely state statutory grounds (Appendix, p. 25), and one dissented on the ground that the federal question had been wrongly decided (Appendix, p. 25).

The Arizona court recognized that there was no danger of the burden of double liability under *Industrial Comm. of Wis. v. McCartin*, 330 U.S. 622 (1947); it found the unconstitutional burden in the possibility of requiring duplicate premiums. It is the double coverage, said the Court, "which is prohibited under our interpretation of the Commerce Clause." (Appendix, 20, 21)

Petitioners sought certiorari in this Court on the ground that a substantial federal question had been wrongly decided, in a manner in conflict with the applicable decisions of this Court and also with decisions in other states.[1]

The American Buslines, Inc., though duly served, has both below and here been a non-participating defendant. It is in receivership in Nebraska, In the Matter of American Buslines, Inc., No. B-15-54, U.C.O.C., Neb., Lincoln Division. An order has been issued barring claims against it except in that Court. However, under Arizona law, petitioners' claim is against the Industrial Commission insurance fund, which will in a separate proceedings be put to such recourse as it has against American Buslines.

II. General Industrial Facts

This record contains no factual matter on the nature of the asserted burden on commerce. Since the burden, if any, is purely financial, such facts could only consist of statistical data on cost consequences of one as against another rule. It is impossible to procure statistics bearing directly on this employer; indeed we have been unable to discover any statistics squarely in point on the industry as a whole. However a recent publication of the Bureau of Transport Economics and Statistics of the Interstate Commerce Commission, *Statistics of Class I Motor Carrier for the Year Ended December* 31, 1953, is highly suggestive. This work contains no breakdown of compensation costs for interstate as against intrastate transportation, and hence necessarily there is no further

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[1] On the federal question aspect of the matter, petitioners relied on *State Tax Comm. v. Van Cott*, 306 U.S. 511, 514 (1939); *Perkins v. Benguet Consol. Min. Co.*, 342 U.S. 437, 443 (1952).

breakdown for carriers engaged exclusively in interstate movements. However there are figures for inter-city as compared with local transport.

These figures are summarized in some detail in Appendix A to this brief. They may be further summarized as follows:

Comparison of Total Costs of Class I Motor Carriers with their Workmen's Compensation Costs, Detailed in Appendix A, infra.

I. Total expense, freight carriers, owned equipment	$ 782,813,761
Workmen's compensation costs, same	6,522,967
II. Total expense, freight carriers, owned and leased equipment, purchased transportation	1,292,816,257
Workmen's compensation costs, same	8,556,630
III. Operating and maintenance expense of inter-city passenger carriers	293,050,629
Workmen's compensation, same	78,681
IV. Operating and maintenance expense, local and suburban carriers	101,181,885
Workmen's compensation, same	300,961
% of workmen's compensation cost to all costs	0.66235%

From the foregoing table it is apparent that the percentage of workmen's compensation costs to all costs among Class I motor carriers is 0.66235%. This, however, covers all employees, many of whom are not at all directly engaged in interstate commerce, as for example maintenance and garage workers, station attendants, solicitors, advertising men, and so on. A breakdown of the employees of inter-city passenger carriers from the same source,

p. 64, shows 36,996 employees, of whom 18,432, or about half, are drivers. If this same ratio can fairly be applied to the workmen's compensation figure given above, then the per cent of total expense for workmen's compensation on drivers is 0.33118%.

As the figures come closer to the case at bar, they become more speculative. Obviously not all drivers are engaged exclusively in interstate commerce — doubtless only a few are. If one were to pass from fact to hunch, the maximum percent of motor carrier industry cost allocable to workmen's compensation on *purely* interstate commerce is perhaps one fifth of the interstate commerce total, or 0.06624%.

But we have not yet reached the critical statistic in the instant case: What percentage of the total cost is involved in a requirement that motor carriers insure on purely interstate business to the level of the highest compensation state through which they operate, instead of restricting themselves to the state of employee residence or contract?

It is impossible to answer with assurance. But if the insurance cost were increased by 10% on drivers exclusively in interstate commerce, the additional percentage burden on the industry might be 0.00662% — about seven thousandths of one percent.

SUMMARY OF ARGUMENT

As a preliminary we note that the Federal Motor Carrier Act is not applicable here, leaving workmen's compensation matters on interstate carriers to state control. As this Court has held, the Motor Carrier Act excludes state regulation only where there is an explicit conflict, *Eichholz v. Public Service Commission*, 306 U.S. 268 (1939); and the Interstate Commerce Commission asserts no jurisdiction whatsoever in this area. Hence numerous state cases, cited below, have held explicitly that the Motor Carrier Act is inapplicable, and this was also the decision of the Court below in the instant case. There is therefore no issue as to this point.

The question in the case is whether the Commerce Clause by itself bars application of the workmen's compensation law of the

state of the injury to a driver in interstate commerce who contracted elsewhere and lives elsewhere. Viewing the matter from the standpoint of the full faith and credit clause, the contract clause, and the due process clause, from which standpoints it has been considered and decided, it has been established in closely related situations that the law of the state of the injury may control. *Watson v. Employers Liability Assurance Corp.*, 348 U.S. 66 (1954); *Carroll v. Lanza*, 349 U.S. 408 (1955). This is in accord with the earlier decision upholding the jurisdiction of the state of injury — in that case California — in *Pacific Employers Insurance Co. v. Industrial Accident Commission of California*, 306 U.S. 493 (1939). In this connection it is unnecessary to give detailed consideration to an earlier full faith and credit case, *Bradford Electric Light Co. v. Clapper*, 286 U.S. 145 (1932), which looked in a different direction since the California law is in any case not exclusive in the same sense as the Vermont statute involved in *Bradford*.

Taking the problem strictly as one under the interstate commerce clause, this matter is within state control. In the days prior to the Motor Carrier Act, this Court had already upheld the general powers of the states over the insurance of carriers, *cf. Sprout v. South Bend*, 277 U.S. 163, 172 (1928) and cases following it. The matter is within the general control of the states over their highways; see, *e.g., South Carolina State Highway Department v. Barnwell Bros.*, 303 U.S. 177 (1938) and *Maurer v. Hamilton*, 309 U.S. 598 (1940). The Commerce Clause is not used to prohibit police regulations, an area in which state control is particularly important; *Freeman v. Hewit*, 329 U.S. 249, 253 (1946), where the benefit to the state is considerable, there is no discrimination, and the burden is negligible. In this case the burden, which consists exclusively of requiring some carriers to buy slightly more insurance, is so small as to be imperceptible. The only state case limiting state power in this regard, *Spohn v. Industrial Commission*, 133 Ohio St. 43, 32 N.E. (2d) 554 (1941), has been very sharply limited in its own jurisdiction; see *Hall v. Industrial Commission*, 131 Ohio St. 416, 3 N.E. (2d) 367

(1936). It is in any case in conflict with the New York decisions, more fully cited below, and *Spelar v. American Overseas Airlines, Inc.*, 80 Fed. Supp. 344, 347 (S.D., N.Y., 1947), disposed of on unrelated grounds here, 338 U.S. 217 (1949).

The Court below reached this result because of its interpretation of *Southern Pacific Co. v. Arizona*, 325 U.S. 761 (1945), although with obvious reluctance at its inability to apply the generous policy of Arizona workmen's compensation because of what it felt to be the federal limitation. The *Southern Pacific* case is distinguishable on numerous grounds, and does not require the result reached below.

ARGUMENT

I. No Federal Statute Precludes Operation of the Arizona Law.

As a preliminary, we may remove from consideration the possibility that any federal statute covers this field. The only possible applicable statute is the Federal Motor Carrier Act, 49 U.S.C. Section 301, et seq., and as the Court below noted, that statute has been consistently held not to affect workmen's compensation. *Basham v. Southeastern Motor Truck Lines, Inc.*, 184 Tenn. 532, 201 S.W. (2d) 678 (1947); *Hall v. Industrial Commission*, 131 Ohio St. 416, 3 N.E. (2d) 367 (1936); *Etters v. Tailways of New England, Inc.*, 266 App. Div. 929, 43 N.Y.S. 2d 884 (1943). This Court has held that the Motor Carrier Act is not to be considered as exclusive of state regulation unless there is some explicit conflict, *Eichholz v. Public Service Commission*, 306 U.S. 268 (1939); *California v. Zook* 336 U.S. 725 (1949). Not even the dissenting view in the *Zook* case would suggest a conclusion here that there is a conflict between the Federal Act and state workmen's compensation laws; see the third distinguishing circumstance in that dissent excluding from discussion State "activity related to but not specifically covered by the federal legislation." 336 U.S. at 749. The instant case is thus wholly distinguishable from *Castle v. Hayes Freight Lines*, 348 U.S. 61 (1954), involving a direct federal-state motor carrier conflict.

In the instant case there is no provision in the Motor Carrier Act relating to workmen's compensation. The regulations of the Commission under the Code provision on other aspects of motor carrier insurance, 49 U.S.C. Section 315, do not cover workmen's compensation in any way. 49 C.F.R. Section 174, *et. seq.* The Interstate Commerce Commission expressly disclaims any jurisdiction in this area and a statement from the Commission to that effect has been lodged with the Clerk and is included as Appendix B to this brief.

It follows that if there is any conflict between the Arizona statute and federal law, it must be, as the Court below held, with the commerce clause itself.

II. The Constitution Permits the State of Injury to Govern the Consequences of Injury—the Argument from the Full Faith, Due Process, and Contract Clauses.

In the instant case, the question is whether the Commerce Clause bars the application of state legislation which would otherwise govern the consequences of an injury occurring within the jurisdiction. This Court has so recently faced that question in connection with several other constitutional clauses that it is worth reviewing the matter from the standpoint of those decisions to determine whether their policy should govern here.

In *Watson v. Employers Liability Assurance Corp.*, 348 U.S. 66 (1954), the issue was the validity of a Louisiana statute permitting suits directly against insurance companies which had insured persons directly involved in an accident. The injury had occurred in Louisiana; and the insured was covered by a policy negotiated and issued in Massachusetts and delivered in Massachusetts and Illinois. This contract of insurance contained a clause, binding under Massachusetts and Illinois law, which barred direct actions against the insurance company. Louisiana law permitted such actions. This Court held that neither the contract clause, the full faith clause, nor the due process clause barred Louisiana from applying its rule to the situation. This

Court said, in language which is fully as applicable in the instant case as there:

> "Louisiana's direct action statute is not a mere intermeddling in affairs beyond her boundaries which are no concern of hers. Persons injured or killed in Louisiana are most likely to be Louisiana residents, and even if not, Louisiana may have to care for them. Serious injuries may require treatment in Louisiana homes or hospitals by Louisiana doctors. The injured may be destitute. They may be compelled to call upon friends, relatives, or the public for help. . . . Moreover, Louisiana courts in most instances provide the most convenient forum for trial of these cases." 348 U.S. at 72.

We appreciate that the *Watson* case is not this case; as Mr. Justice Frankfurter noted in his concurrence, 348 U. S. at 82, there was there "no claim of interference with interstate commerce." Nonetheless the policy factors developed in the *Watson* case are very strong as was more fully shown later in the last term in *Carroll* v. *Lanza*, 349 U. S. 408 (1955). In *Carroll*, an employee made his contract of employment in Missouri but was injured while working in Arkansas. He first received benefits under the Missouri Compensation Act which is in the most explicit terms exclusive of all other rights and remedies. Thereafter he brought an action in Arkansas for damages in common law. The issue was whether the full faith and credit clause required Arkansas to honor the exclusive provisions of the Missouri Act.

Basic differences between the *Carroll* case and this one, in addition to the fact that the California Act may not be "exclusive" in the extra-territorial sense, are first, the employee in *Carroll* was a construction worker not engaged in interstate commerce; second, the defense was based upon the full faith and credit clause rather than the commerce clause; and third, the employee had actually received payments under the Missouri law, a circumstance not present here. Nonetheless the similarities are very great: The employee did make his contract in one state and was injured in another, and he was entitled to workmen's compensa-

tion in the state of contracting just as the petitioners may be entitled here.[4]

In upholding the power of the state of the injury to give relief, this Court reviewed extensively the numerous cases previously here. This Court flatly held that Arkansas need not give full faith and credit to the Missouri policy:

> "The *Pacific Employers Insurance Company* case teaches that in these personal injury cases the State where the injury occurs need not be a vassal to the home state and allow only that remedy which the home state has marked as the exclusive one. The State of the forum also has interests to serve and to protect . . . Her interests are large and considerable and are to be weighed not only in the light of the facts of this case but by the kind of situation presented. For we write not only for this case and this day alone, but for this type of case. The State where the tort occurs certainly has a concern in the problems following in the wake of the injury. The problems of medical care and of possible dependents are among these, as *Pacific Employers Insurance Company* v. *Industrial Accident Commission, supra,* emphasizes." 349 U. S. 412, 413.

The trend of all the other cases—and the Restatement[5]—is to this end. We need not pause to consider whether *Bradford Electric Light Co.* v. *Clapper*, 286 U. S. 145 (1932), has or has not been overruled; cf. the discussion of this point in *Carroll* v. *Lanza, supra,* in the majority and dissenting opinions, 349 U. S. at 412, 421, 422. The instant case is distinguishable because of the difference in the nature of the two statutes. In *Bradford*, the Vermont statute specifically provided that the local remedy should be "ex-

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[4]Counsel feels a duty to advise the Court, even though the matter is not in this record, that, after the adverse decision of the Court below, the petitioners opened the matter of an application in California but have not pursued it to a final award pending the outcome of this litigation.

[5]Restatement of Conflicts, sec. 399.

No. 523

In the Supreme Court of the United States

OCTOBER TERM, 1955

JOAN GREENWAY COLLINS, WIDOW, AND CARROLL LEE COLLINS, MINOR CHILD OF ADOLFUS HENRY COLLINS, DECEASED, PETITIONERS,

vs.

AMERICAN BUSLINES, INC., RESPONDENT EMPLOYER, THE INDUSTRIAL COMMISSION OF ARIZONA, RESPONDENT INSURANCE CARRIER.

PETITION FOR REHEARING

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In the Supreme Court of the United States

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PETITION FOR REHEARING

Comes now Respondent, The Industrial Commission of Arizona, by and through its counsel of record and respectfully petitions this Honorable Court for a rehearing on the subject matter and the decision of the Court announced herein on the 9th day of April, 1956.

GROUNDS FOR REHEARING

(a) The decision of this Court, announced on April 9, 1956, and the reasons given for said decision embodied in the Court's opinion, are based upon an erroneous conception of the issues rendered herein.

(b) The decision of this Court announced on April 9, 1956, and the reasons for said decision embodied in the Court's opinion, do not construe the reasons given by the Court below in its decision, nor the issues tendered to the Court below, and therefore the decision herein rendered is not decisive of the issues presented.

STATEMENT

The issues presented to this Court are set forth in Briefs of counsel. Petitioners presented the question as follows:

> Whether a state workmen's compensation law may be applied by the state of injury to a motor carrier operator engaged exclusively in interstate commerce where (a) the operator lives in, (b) made his contract of employment in, and (c) is covered by the workmen's compensation act of another state? (Brief of Petitioners, Page 1.).

Respondent herein presented the question as follows:

> Whether the workmen's compensation law of the state of the injury *must* be applied to a motor carrier operator in interstate commerce where the claimant is domiciled in, has contracted his hire in, and is fully covered by the compensation laws of, another state. (Brief of Respondent, Page 2.)

As appears from the record herein, the decision of the Court below construed the burden upon interstate commerce to be the double premium requirement affecting employers engaged in commerce between the states, and Respondent herein asserted in Brief (1) that the reason for the decision below rested in the state statutes alone, and (2) that the observations of the Court below in its opinion concerning the federal commerce clause were sound. Petitioners herein contended in Brief that the double premium requirement did not constitute a burden upon the interstate commerce.

The opinion herein announced on April 9, 1956, contains the following language appearing on Page 3 of the initial printed distribution:

> "The apparent interest of the Commission is different, namely, that as a result of an award in this case, interstate carriers will seek insurance from a single private insurance carrier capable of giving coverage in all States through which they run. The desire by interstate carriers for such insurance will cause a defection from the state compensation fund, and it is this potential defection which leads to the Commission's claim that the Arizona Act cannot be applicable in an interstate situation. But this claim of a burden upon interstate commerce — the disadvantageous effect upon the state compensation fund — is too intangible and elusive to be deemed a constitutionally disallowable burden."

Clearly, the above conclusions which obviously served as a basis for this Court's decision have no support in the record herein. The interest of Respondent The Industrial Commission of Arizona is not as stated in the above language of the Court, and the issues heretofore tendered and argued do not embody any argument concerning a "defection" from the state compensation fund. Likewise, such matters were not before the Court below.

For the reasons herein given, the decision herein is not decisive of the questions presented to the Court below nor of the question presented to this Court. The matter is of extreme importance to Respondent The Industrial Commission of Arizona, the agency responsible for the administration of the Arizona Workmen's Compensation Act, not only in the instant case, but in policy and practice relating to several hundred others.

Reheaving herein is warranted and necessary in order to clarify the situation and eliminate erroneous impressions regarding the issues tendered herein and the issues tendered to the Court below, and in order that the decision herein might be decisive of the question presented below.

WHEREFORE it is prayed that rehearing be granted herein.

Respectfully submitted:

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April 1956

CERTIFICATE OF COUNSEL

RELATIVE TO GOOD FAITH

I, JOHN R. FRANKS, attorney for Respondent, The Industrial Commission of Arizona herein, and a member of the Bar of the Supreme Court of the United States, do hereby certify that the foregoing Petition for Rehearing filed herein is presented in good faith and that the same is not presented for delay nor for any reason other than to conscientiously present in good faith counsel's honest belief concerning the subject matter of said Petition.

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